

# Exhibit B



**NatCity Investments, Inc.**  
**Investment Banking**  
1900 East 9<sup>th</sup> Street, 20<sup>th</sup> Floor  
Cleveland, OH 44114

June 8, 2007

Barry E. Bressler, Esquire  
Schnader, Harrison, Segal & Lewis, LLP  
1600 Market Street, Suite 3600  
Philadelphia, PA 19103

Dear Mr. Bressler:

You have asked us our opinion regarding certain issues pertaining to the bankruptcy case of Coram Healthcare Corporation and Coram, Inc. ("Coram"), Case 00-3299 and 00-3300 in the United States Bankruptcy Court for the District of Delaware. Following is a discussion of these issues.

**Unusual Cash Payments Made by Coram Prior to Chapter 11 Filing**

Bankruptcy is typically an expensive undertaking. Companies that have just filed for bankruptcy protection require substantial liquidity to fund administrative costs, to fund operations that may be negatively impacted by the filing, and to make payments to stakeholders that facilitate the company's emergence pursuant to a Plan of Reorganization. As a result, it is normal operating procedure for companies to prepare for an anticipated bankruptcy filing by conserving as much cash as possible.

As CEO of Coram, Dan Crowley made several decisions that ran counter to this accepted logic. Specifically, he made cash payments to the Noteholders in the months leading up to Coram's bankruptcy filing on August 8, 2000 even though these disbursements were not required. This had the effect of reducing precious cash needed in the Coram estate for the sole benefit of the recipients of that cash, the Noteholders. These disbursements were made in July 2000 and August 2000, literally weeks prior to the bankruptcy filing. It is clear that Mr. Crowley was contemplating bankruptcy well before these payments were made and as early as February 2000, when Coram retained bankruptcy counsel. On February 28, 2000, Coram's bankruptcy attorney, David Friedman, sent Mr. Crowley a letter that specifically suggests bankruptcy as a means to address Coram's financial difficulties.

Barry E. Bressler, Esquire  
June 8, 2007  
Page 2

The first unusual cash disbursement made just prior to the bankruptcy filing and while the Company was contemplating the Chapter 11 filing was a \$6.3 million interest payment made to the Noteholders on July 14, 2000. Coram had the option to make this payment "in kind" rather than in cash, whereby the payment would simply be added to the principal balance. This action depleted the cash that was available to Coram when it filed for bankruptcy less than one month later. Further, the contemplated Plan of Reorganization encompassed the conversion of the entire Noteholders debt balance into equity. This would have been the case if the interest payment was made in cash or in kind. Therefore, the cash payment served to benefit only the Noteholders while harming the Debtor-in-Possession by depleting it of much needed cash.

On July 31, 2000, Coram sold its specialty pharmacy division, CPS, and was able to reap \$38 million in net proceeds. All of the proceeds were wired to the Noteholders, \$28.5 million of which was used to pay down the secured revolver and \$9.5 million of which was used to make a voluntary pre-payment of the Series A Notes. The \$9.5 million payment was discretionary and highly unusual in light of Coram's bankruptcy filing one week later. While it is true that Noteholder consent was required to consummate the sale of CPS, this provision would have been unenforceable in Chapter 11. This payment benefited only the Noteholders as the \$9.5 million would have otherwise remained with Coram for the purposes of funding bankruptcy expenses or disbursements to stakeholders pursuant to the Plan of Reorganization.

#### **Confirmability of First Plan and Impact of Non-Confirmation**

On December 21, 2000, the Court rejected Coram's First Amended and Restated Plan of Reorganization ("First Plan"). The Court held that the First Plan was not confirmable due to Mr. Crowley's conflict. The only other material issue during the confirmation hearing related to valuation. The ultimate valuation that was accepted by the Court when the Trustee's Plan was confirmed was consistent with the Debtor's original valuation put forth at the time of the First Plan. Therefore, the competing valuation testimony would not have prevented confirmation of the First Plan since the very same valuation dispute did not prevent confirmation of the Trustee's Plan. But for the relationship between Mr. Crowley and Cerberus, the First Plan would have been confirmed.

Without this relationship which tainted the First Plan, Coram would have emerged from bankruptcy approximately three years earlier than it actually did. Confirmation of the First Plan would have saved Coram over \$30 million of bankruptcy-related expenses from December 2001 to October 2004.

All of the professional fees paid throughout the prolonged bankruptcy were approved by the Court. All parties in interest in the case had standing to object to all final fee applications. Approval of final fee applications is a conclusive determination that the fees and expenses allowed by the Court were reasonable and necessary. The Trustee objected to the Equity Committee's counsel's final fee application and the fee was reduced by the Court.

Barry E. Bressler, Esquire  
June 8, 2007  
Page 3

### **Performance of Companies in Chapter 11**

Companies that are in Chapter 11 typically do not perform as well as those not in Chapter 11. There are several reasons. First, when a company files, concerns are immediately raised by the customer base about whether the bankrupt company will continue its operations. In response, customers may cease or ratchet back orders until these fears are allayed. Competitors often exacerbate these fears by circulating negative press in the marketplace and other such tactics. In the case of Coram, the prior liquidation of its R-Net subsidiary likely further raised going-concern suspicions and had negative implications for referring physicians.

In a letter to the Board of Directors dated October 20, 2000, Mr. Crowley conveyed that Coram was enduring this adverse impact of bankruptcy. He wrote, "Coram has seen a significant 'softness' in revenue in the past two (2) months that is directly relational to the reduced referrals caused, at least in part, by the Chapter 11 filing." He reiterated the same sentiment in another letter to the Board of Directors dated March 9, 2001 in which he attributed "a general 'softness' in referrals from providers" to, in part, "the prolonged Chapter 11." He also wrote that "some providers are concerned about continuity of care, are risk averse for their patients, and respond to the Chapter 11 and competitive entreaties to shift business from Coram to Apria, Gentiva, Caremark, Option Care Nutrashare, local hospitals, and local infusion providers. The impact of all of this is a constant tamping down of Coram's sales." Through both e-mails and testimony, other members of the Coram senior management team also explicitly expressed how the bankruptcy was adversely impacting Coram's operations.

In addition to the patient and referring physician concerns, which did in fact negatively impact Coram according to its CEO and management team, there are several other reasons why companies in bankruptcy tend to perform worse than those not in bankruptcy. Since trade payables are stayed at the time of a filing, there is often the risk of post-petition supply disruptions. A bankruptcy is also very time consuming for the senior management team. Rather than focusing exclusively on running the business, they must allocate time to formulate emergence strategy, allay customer fears, draft bankruptcy related documents, attend hearings and meet with attorneys and financial advisors, among other things. All of these matters serve to distract management from maximizing the performance of the business. Since all non-normal course activities and extraordinary uses of cash must be approved by the Court, a bankrupt company is less agile and less able to react to and exploit market opportunities on a timely basis. Finally, while in bankruptcy, a company must alleviate the uncertainty of the employees, who may have the same going-concern fears as customers. A bankruptcy can often prompt an employee exodus. In addition, the loss of value in any stock-based compensation, which usually accompanies a bankruptcy filing, can demotivate employees. For these reasons, bankrupt companies often find it necessary to institute key employee retention plans.

The impact of the bankruptcy was particularly harmful in the case of Coram as it lasted for an unusually long period of time, over four years. Further, the reasons for the rejection of the first two Plans of Reorganization (conflict of interest, lack of good faith) cast Coram's situation in a particularly negative light in the marketplace.

Barry E. Bressler, Esquire  
June 8, 2007  
Page 4

**Trustee's Dealings with Mr. Crowley**

Mr. Crowley's employment contract with Coram expired on November 30, 2002. The Trustee entered into a Transition Agreement with Mr. Crowley to extend his employment for six months, subject to Bankruptcy Court approval. The Trustee also entered into a letter of intent with Mr. Crowley to settle his administrative claim, subject to Bankruptcy Court approval. These efforts by the Trustee were a reasonable exercise of his business judgment as they were done to try to facilitate a speedy emergence from bankruptcy on a consensual basis with all constituents. Consistent with this strategy, the Trustee conducted mediations with the Noteholders and the Equity Committee in September 2002. The Trustee also proceeded to enter into settlements with the Noteholders, the IRS, R-Net, TBOB and AT&T.

The Trustee's goal in extending Mr. Crowley's employment for six months was to maintain as much stability as possible while he was negotiating a consensual Plan of Reorganization and eliminate any potential disruption in operations caused by the departure of the CEO and President. The Trustee's attempt to settle Mr. Crowley's claims was consistent with his goal of proposing a Plan of Reorganization that resolved as many disputes as possible, which would create as much certainty as possible as to the cash distribution to be received by shareholders. The proposed settlement would have reduced Mr. Crowley's approximately \$17 million claim to \$2 million and would have provided additional certainty as to the distributions to the unsecured creditors and shareholders under the Trustee's Plan. Thus, the Trustee's decision to extend Mr. Crowley's appointment through a Transition Agreement and to attempt to settle his claim was a reasonable exercise of his business judgment.

Shortly before the hearing to approve the Transition Agreement, Mr. Crowley produced documents which included draft letters that reflected conversations between him and Cerberus regarding a possible settlement with Cerberus. The Equity Committee argued that the draft letters showed that Mr. Crowley was continuing to attempt to get paid by Cerberus for his work at Coram. It was reasonable for the Trustee to proceed with his motion to allow the Court to determine whether that was so or whether, as Mr. Crowley argued, the draft letters did not relate to Coram.

After the Court denied the motion, The Trustee and Mr. Crowley went back to their prior positions and the Trustee properly included the claims against Mr. Crowley as part of the Plan of Reorganization. Under the Bankruptcy Code, the Trustee has a responsibility to maximize the value of the Estate for the benefit of stakeholders. As per the Order confirming the Trustee's Second Amended Plan of Reorganization, the net proceeds from the Causes of Action "shall be distributed as follows: (i) first, to Reorganized Coram in an amount equal to the Post-Effective Date Administrative Claims relating to the Causes of Action; (ii) second, to the holders of Allowed General Unsecured Claims on a pro rata basis in an amount equal to the interest accruing (at the statutory judgment rate set forth in Section 1961 of Title 28 of the United States code) from the Petition Date through the Effective Date on account of such Allowed General Unsecured Claims until such interest has been paid in full; and (iii) third, on a pro rata basis to the holders of CHC Equity interest."

Barry E. Bressler, Esquire  
June 8, 2007  
Page 5

A list of the documents reviewed as well as my Resume are attached to this report.

The conclusions in the discussion above constitute my professional opinion to a reasonable degree of professional certainty. I reserve the right to supplement this report and respond to the opinions of any opposing experts.



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J. Scott Victor  
Senior Managing Director and  
Co-Head, Special Situations Group  
National City Investment Banking



**Documents Reviewed**

Michael Temin report dated October 3, 2006

Letter from David Friedman to Dan Crowley dated February 28, 2000

Letter from Daniel Crowley to Cerberus dated July 31, 2000

Letter from Daniel Crowley to Coram Board of Directors dated October 20, 2000

Draft letter from Daniel Crowley to "Friends of Coram"

Letter from Daniel Crowley to Coram Board of Directors dated March 9, 2001

Transcript of Trustee's Motion for Authorization to Reject the Executory Contract of Daniel Crowley dated March 3, 2003

Coram press release dated July 31, 2000

Opinion confirming the Trustee's Plan dated October 5, 2004

Order confirming the Chapter 11 Trustee's Second Amended joint Plan of Reorganization dated October 27, 2004

Opinion denying confirmation of the Second Joint Plan of Reorganization dated December 21, 2001

Spreadsheet of selected reorganization expenses

E-mail from Michael Sarocco to Kurt Davis dated February 12, 2001

E-mail from Kurt Davis to executive Planning dated February 16, 2001

Terms of Crowley Transition Agreement dated December 24, 2002

Terms of Crowley Settlement Agreement dated January 7, 2003

Chapter 11 Trustee's Answers to Defendant Daniel Crowley's First Set of Interrogatories to Plaintiff Arlin Adams dated December 20, 2006

Chapter 11 Trustee's Answers to Defendant Daniel Crowley's Second Set of Interrogatories to Plaintiff Arlin Adams dated March 27, 2007

Several Filings Pertaining to the Fee Application of Jenner & Block

Several Filings Pertaining to the Key Employee Retention Plan

Securities Exchange Agreement dated May 6, 1998

Chapter 11 Trustee's Answers to Interrogatories

Transcript of Confirmation Hearing dated November 10, 2003

Several Filings Pertaining to Motion for Summary Judgment or, in the Alternative, for the Court to Deem Certain Facts Established

Transcript of Depositions of Arlin Adams, Scott Danitz, Kurt Davis, Daniel Crowley, Allen Marabito and Michael Saracco

Amendment 2 to Securities Exchange Agreement between Coram and Noteholders dated April 9, 1999

Transcript of December 21, 2000 Court hearing

First Plan Disclosure Statement

First Amended and Restated Disclosure Statement

Coram 1999 10-K

Coram 2000 10-K

Updated Report of Goldin Associates

First Amended Second Joint Disclosure Statement

Request of Daniel Crowley for Payment of Administrative Expense

Several Filings Pertaining to the Fee Application of Altheimer & Gray



**Resume of J. Scott Victor**

SPECIAL SITUATIONS GROUP/SSG

**National City**  
Investment Banking

**J. Scott Victor**  
**Senior Managing Director**  
**Co-Head, Special Situations Group**

J. Scott Victor is a Senior Managing Director and Co-Head of the Special Situations Group/SSG of National City Investment Banking with offices outside of Philadelphia, PA, New York, NY, Cleveland, OH and Cincinnati, OH. Scott was one of four founding partners of SSG Capital Advisors, L.P., a boutique middle-market investment banking firm that was acquired in August, 2006 by National City Bank. Prior to his transition to investment banking in 2000, Scott was a partner at Saul Ewing, LLP and a senior member of its Bankruptcy and Reorganization Department.

With over 20 years of experience in representing companies in Chapter 11 proceedings, workouts and restructurings, Scott is an expert in the restructuring, refinancing and sale of distressed middle-market companies. As a Senior Managing Director and Co-Head of the Special Situations Group/SSG of National City Investment Banking, Scott provides investment banking services focusing on the sale, turnaround financing, restructuring and complex valuation of middle-market companies facing operational and/or financial challenges both in and out of Chapter 11 proceedings throughout the U.S. and Europe. His clients are both public traded and privately held companies in a wide variety of industries including manufacturing, home furnishings, automotive, distribution, consumer products, healthcare, chemical, telecommunications, food processing, media, printing, packaging, service, transportation, publishing, e-commerce and retail.

Scott has lead or participated in well over 100 sale, refinancing and restructuring assignments for distressed middle-market companies both in and outside of Chapter 11 proceedings and has testified as an expert in numerous Bankruptcy Courts across the U.S. Scott has given more than 100 presentations around the U.S. and Europe on Bankruptcy and Insolvency Law, Distressed M&A and Turnaround Financing issues for organizations such as the American Bankruptcy Institute, Turnaround Management Association, Wharton School of the University of Pennsylvania, Pennsylvania Bar Institute, Philadelphia Bar Education Center, Eastern District of Pennsylvania Bankruptcy Conference, Southern District of Florida Bankruptcy Bar Association, New York Business Forum, Strategic Research Institute, Institute for International Research and Financial Research Associates.

Scott is a Fellow of the American College of Bankruptcy. He is also an active member of the Turnaround Management Association – immediate past President and Chairman of the Philadelphia Chapter and member of the Executive Committee of Board of Directors of TMA International and serves as 2006-2007 Vice President of Conferences, the American Bankruptcy Institute – 2007-2008 Co-Chair of the Investment Banking Committee, Co-Chair - 2006 ABI Complex Financial Restructuring Conference and Board of Advisors for the 2007 ABI Mid-Atlantic Bankruptcy Conference, the Eastern District of Pennsylvania Bankruptcy Conference – Steering Committee 2006-2007, Association of Insolvency and Restructuring Advisors, Association for Corporate Growth, Philadelphia Bar Association, Pennsylvania Bar Association and American Bar Association. Scott is a former President and a member of the Executive Committee and Board of Directors of the Consumer Bankruptcy Assistance Project, a member of the Board of Trustees of the Cardiovascular Institute of Philadelphia, a member of the Hamilton Circle and former member of the Board of Trustees of the Philadelphia Bar Foundation. Scott has also been named a Pennsylvania Super Lawyer for 2006 and 2007 as well as named a Top Investment Banker by The Deal for 2004, 2005, 2006 and 2007.

Scott received his BA from the University of Pennsylvania, 1980 and his JD from the University of Miami School of Law, 1983.

# Exhibit C

Page 1	Page 2
<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>ARLIN M. ADAMS, Chapter 11 Trustee of the Post-Confirmation Bankruptcy Estates of CORAM HEALTHCARE CORPORATION, a Delaware Corporation, and of CORAM INC., a Delaware Corporation</p> <p>vs.</p> <p>DANIEL D. CROWLEY, DONALD : CASE NO. J. AMARAL; WILLIAM J. CASEY; : 04-1565 L. PETER SMITH; and SANDRA : L. SMOLEY, : Defendants. :</p> <p>Philadelphia, Pennsylvania, Monday, August 6, 2007</p> <p>Video deposition of MICHAEL L. TEMIN, ESQUIRE, taken pursuant to notice, at Schnader, Harrison, Segal &amp; Lewis, 1600 Market Street, Suite 3600, on the above date, beginning at approximately 10:10 a.m., before Michelle L. Gray, Certified Shorthand Reporter and Notary Public.</p>	<p>1 2 APPEARANCES: 3 Counsel for Plaintiffs</p> <p>4 BARRY E. BRESSLER, ESQUIRE Schnader, Harrison, Segal &amp; Lewis 5 1600 Market Street, Suite 3600 Philadelphia, Pennsylvania 19103 6 (215) 751-2572 bbressler@schnader.com</p> <p>7 8 Counsel for Defendants</p> <p>9 ELLIOT PETERS, ESQUIRE Keker &amp; Van Nest, LLP 10 710 Sansome Street San Francisco, California 94111 11 (415) 391-5400 12 epeters@kvn.com</p> <p>13 14 15 ALSO PRESENT: Gerard Alfe, Videographer</p> <p>16 17 18 19 20 21 22 23 24 25 (INDEX at end of transcript.)</p>
Page 3	Page 4
<p>1 2 THE VIDEOGRAPHER: This 3 videotape deposition is now beginning. 4 This is the videotape deposition of 5 Michael C Temin, Tape 1, Volume 1, taken 6 in the matter of Adams versus Crowley, et 7 al., in the United States District Court 8 in the District of Delaware, Case No. 9 04-1565 (SLR).</p> <p>10 Today's date is August 6, 2007. 11 The time is 10:10. The court reporter is 12 Michelle Gray. I am the video operator, 13 Gerard Alfe, both representing LiveNote 14 Worldwide Service.</p> <p>15 Counsel will now introduce 16 themselves.</p> <p>17 MR. PETERS: Elliott Peters of 18 Keker and Van Ness, LLP, on behalf of the 19 defendant, Daniel Crowley.</p> <p>20 MR. BRESSLER: Barry Bressler 21 of Schnader, Harrison, Segal &amp; Lewis on 22 behalf of the plaintiff, Arlin M. Adams, 23 the Chapter 11 Trustee.</p> <p>24 And before the witness does so, 25 his correct middle initial is L, as in</p>	<p>1 MICHAEL L. TEMIN, ESQUIRE 2 Lewis.</p> <p>3 ... MICHAEL L. TEMIN, ESQUIRE, 4 having been first duly sworn, was examined 5 and testified as follows: 6 EXAMINATION</p> <p>7 BY MR. PETERS: 8 Q. Mr. Temin, how are you employed? 9 A. I'm employed by Wolf, Block, 10 Solis-Cohen, LLP.</p> <p>11 Q. What are they? 12 A. A law firm.</p> <p>13 Q. Are you testifying as an expert in 14 this case? 15 A. Yes.</p> <p>16 Q. Have you testified as an expert in 17 any other cases? 18 A. Yes.</p> <p>19 Q. On how many other occasions have you 20 testified as an expert? 21 A. In court or at depositions? 22 Q. Any sworn testimony. 23 A. What time period? 24 Q. How about the last ten years? 25 A. Five or six, I believe.</p>

Page 13

1 MICHAEL L. TEMIN, ESQUIRE  
2 consider yourself an expert on the standard of  
3 care of a bankruptcy lawyer?  
4 A. Yes.  
5 Q. Is your area of expertise in this  
6 case all of bankruptcy law? A particular  
7 portion of bankruptcy law?  
8 A. In this case?  
9 Q. In this case.  
10 A. I was asked to answer one question.  
11 Q. And did that -- withdrawn.  
12 Did answering that question cause  
13 you to call upon your expertise in any  
14 particular areas of bankruptcy law?  
15 A. Yes.  
16 Q. Which areas?  
17 A. My knowledge of reorganization law  
18 and my views of the way the Bankruptcy Court  
19 in Delaware, Judge Walrath in particular,  
20 would apply that law.  
21 Q. In rendering your opinion in this  
22 case, did you draw upon your knowledge and  
23 expertise in the operation of the bankruptcy  
24 process?  
25 A. To some extent.

Page 15

1 MICHAEL L. TEMIN, ESQUIRE  
2 in predicting the behavior of Judge Mary  
3 Walrath?  
4 A. In general? Or in a particular  
5 case?  
6 Q. Let's start out with in general.  
7 A. No.  
8 Q. Do you consider yourself an expert  
9 at predicting the behavior of any other judges  
10 in the Delaware Bankruptcy Court under any  
11 particular circumstances?  
12 A. It would depend on which judge and  
13 what set of circumstances.  
14 Q. As to which of the judges in the  
15 Delaware Bankruptcy Court do you consider that  
16 there are circumstances under which you would  
17 be an expert at predicting their behavior?  
18 A. Judge Walsh, Judge Carey, and Judge  
19 Walrath.  
20 Q. Only those three?  
21 A. Yes.  
22 Q. Why Judge Walsh?  
23 A. Because he is the longest serving  
24 bankruptcy judge in Delaware.  
25 Q. Any other reasons?

Page 14

1 MICHAEL L. TEMIN, ESQUIRE  
2 Q. In rendering your opinions in this  
3 case, did you draw upon your expertise in  
4 predicting what a judge would do under  
5 particular circumstances?  
6 A. What a particular judge would do  
7 under a particular set of circumstances.  
8 Q. Do you consider yourself an expert  
9 in the behavior of judges in the Bankruptcy  
10 Court in Delaware?  
11 MR. BRESSLER: Object to the  
12 form.  
13 THE WITNESS: Generally? No.  
14 BY MR. PETERS:  
15 Q. Are you an expert with respect to  
16 the behavior of judges on the Third Circuit?  
17 A. No.  
18 Q. Are there any judges in the Delaware  
19 Bankruptcy Court as to whom you consider  
20 yourself an expert in evaluating or opining  
21 about their behavior?  
22 A. In general?  
23 Q. Correct.  
24 A. No.  
25 Q. Do you consider yourself an expert

Page 16

1 MICHAEL L. TEMIN, ESQUIRE  
2 A. No.  
3 Q. How about Judge Carey?  
4 A. Yes.  
5 Q. And why do you consider yourself an  
6 expert?  
7 A. Because I've known Judge Carey since  
8 he started practicing law and observed him as  
9 a judge in the Bankruptcy Court for the  
10 Eastern District of Pennsylvania and as a  
11 judge in the District of Delaware Bankruptcy  
12 Court.  
13 Q. And how about Judge Walrath? Why do  
14 you consider yourself an expert in --  
15 A. I have known her since she started  
16 practicing law and have observed her as a  
17 judge in the Bankruptcy Court in the District  
18 of Delaware.  
19 Q. But with respect to any of the other  
20 judges in the Bankruptcy Court in Delaware,  
21 you do not consider yourself an expert in  
22 evaluating or opining about their behavior?  
23 MR. BRESSLER: I'll object to  
24 the form, but he can answer.  
25 THE WITNESS: That's correct.

Pages 13 to 16

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Page 17

1 MICHAEL L. TEMIN, ESQUIRE

2 BY MR. PETERS:

3 Q. Are there particular circumstances  
4 under which you would feel yourself to be an  
5 expert, for example, in predicting the  
6 behavior of Judge Walsh?

7 A. Yes.

8 Q. What types of circumstances?

9 A. In a defined case in which the facts  
10 were laid out, I think that I would be an  
11 expert in predicting what Judge Walsh would  
12 opine.

13 Q. What do you mean by if the facts had  
14 laid out?

15 A. I would not do it in the abstract,  
16 nor do I think I could, but in a particular  
17 case in which I knew the evidence that Judge  
18 Walsh had heard or would hear, I think that I  
19 would be able to predict what Judge Walsh  
20 would do.

21 Q. So in any case where you  
22 familiarized yourself with the factual record  
23 before Judge Walsh and considered the legal  
24 questions, you could predict the outcome of  
25 that case?

Page 19

1 MICHAEL L. TEMIN, ESQUIRE

2 record was by reading the public record,  
3 right?

4 A. Generally.

5 Q. So in any case before that court,  
6 before that judge, you could predict the  
7 outcome of the case based on what's publicly  
8 available?

9 MR. BRESSLER: Object to the  
10 form.

11 THE WITNESS: I believe that I  
12 could.

13 BY MR. PETERS:

14 Q. Do you believe you can do that more  
15 than other practitioners in Philadelphia or  
16 Delaware?

17 A. More than most others, yes.

18 Q. Do you represent that to your  
19 clients, that you're able to predict better  
20 than other lawyers what's going to happen in  
21 court?

22 A. No.

23 Q. Why not?

24 A. Why?

25 Q. I asked you the question, though:

Page 18

1 MICHAEL L. TEMIN, ESQUIRE

2 MR. BRESSLER: Object to the  
3 form. That's not what he said.

4 THE WITNESS: I think I  
5 probably could.

6 BY MR. PETERS:

7 Q. To -- under those circumstances, to  
8 what -- what do you believe your success rate  
9 would be in predicting the outcome of a case  
10 before Judge Walsh? 100 percent?

11 A. No.

12 Q. What would your percentage rate be?

13 A. I don't know.

14 Q. 50 percent?

15 A. Over 50 percent.

16 Q. 80 percent?

17 A. I do not know. Between 50 and 100.

18 Q. More than 90 percent, you think?

19 A. I do not know. Between 50 and 100.

20 Q. So -- now, the bankruptcy  
21 proceedings in Delaware, they are public; is  
22 that right?

23 A. Yes.

24 Q. So in every single case before Judge  
25 Walsh, you could find out what the factual

Page 20

1 MICHAEL L. TEMIN, ESQUIRE

2 why not?

3 A. I have no occasion to do so.

4 Q. Do you believe that your ability to  
5 predict the behavior of a federal bankruptcy  
6 judge under certain circumstances is necessary  
7 to the completion of your assignment in this  
8 case?

9 A. Generally? No.

10 Q. Does it bear upon your assignment at  
11 all?

12 A. It bears upon it only with respect  
13 to my ability to predict how Judge Walrath  
14 would act in  
15 a particular -- in this particular case.

16 Q. Is the ability to predict how Judge  
17 Walrath would act in a particular case  
18 necessary for the completion of your  
19 assignment in this case?

20 A. Only necessary for me to predict how  
21 she would act in this case.

22 Q. But in order to do that, to predict  
23 how she would act in this case, you need to be  
24 able to predict how she would act in other --  
25 under a certain set of facts and

Pages 17 to 20



Page 21

1 MICHAEL L. TEMIN, ESQUIRE  
 2 circumstances, right?  
 3 A. No.  
 4 Q. Are you only able to predict Judge  
 5 Walrath's behavior in this case, or would you  
 6 be able to predict her behavior in other  
 7 cases?  
 8 MR. BRESSLER: Object to the  
 9 form.  
 10 THE WITNESS: I believe I could  
 11 predict her behavior in other cases as  
 12 well, but it is not necessary for my  
 13 expert opinion in this case.  
 14 BY MR. PETERS:  
 15 Q. As with Judge Walsh, who you  
 16 testified about, would you be able to predict  
 17 Judge Walrath's behavior in any case in which  
 18 you knew the factual record?  
 19 A. Any case? I don't know about any  
 20 case.  
 21 Q. So there are certain circumstances  
 22 under which you think you could not predict  
 23 Judge Walrath's behavior?  
 24 A. I don't have a thought about that  
 25 one way or the other.

Page 22

1 MICHAEL L. TEMIN, ESQUIRE  
 2 Q. You would be able in any case before  
 3 Judge Walrath, though, to obtain -- to obtain  
 4 from the Court the factual record, correct?  
 5 MR. BRESSLER: Object to the  
 6 form.  
 7 THE WITNESS: In most cases.  
 8 BY MR. PETERS:  
 9 Q. In the course of your career, have  
 10 you handled cases before Judges Walsh, Carey,  
 11 and Walrath?  
 12 A. Define "handled."  
 13 Q. Been an attorney of record in a  
 14 contested proceeding.  
 15 A. Which went to trial or just in a  
 16 contested proceeding?  
 17 Q. Fair -- fair point of clarification.  
 18 In any contested proceeding in which the Court  
 19 had to rule.  
 20 MR. BRESSLER: I'll object to  
 21 the form, but he can answer.  
 22 THE WITNESS: Yes, yes, and no.  
 23 BY MR. PETERS:  
 24 Q. Can you explain what the "yes, yes,  
 25 and no" refer to?

Page 23

1 MICHAEL L. TEMIN, ESQUIRE  
 2 A. You asked three questions. I  
 3 answered them.  
 4 Q. Okay. Have you ever appeared in a  
 5 contested proceeding in front of Judge Walsh  
 6 where the Court had to rule?  
 7 A. Yes.  
 8 MR. BRESSLER: I'll object to  
 9 the form. But he can answer.  
 10 BY MR. PETERS:  
 11 Q. Have you ever appeared as counsel in  
 12 a contested proceeding before Judge Walsh  
 13 where he ruled against you or your client?  
 14 A. I don't recall.  
 15 Q. On how many occasions have you  
 16 appeared on behalf of a client in a contested  
 17 proceeding before Judge Walsh?  
 18 A. I don't recall.  
 19 Q. Do you recall whether you have ever  
 20 appeared before Judge Walsh in a contested  
 21 proceeding on behalf of a client where your  
 22 client won?  
 23 A. I don't recall.  
 24 Q. Do you recall whether you've ever  
 25 appeared in front of -- if I've just asked you

Page 24

1 MICHAEL L. TEMIN, ESQUIRE  
 2 this, I apologize, but do you recall if you  
 3 ever appeared in a contested proceeding before  
 4 Judge Walsh on behalf of a client?  
 5 A. Yes.  
 6 MR. BRESSLER: I'll object to  
 7 the form.  
 8 BY MR. PETERS:  
 9 Q. You do?  
 10 A. Yes. But I don't recall the  
 11 specifics.  
 12 Q. When was the last time you appeared  
 13 before Judge Walsh?  
 14 A. I don't recall.  
 15 Q. Was it in the last ten years?  
 16 A. Yes.  
 17 Q. Was it in the last five years?  
 18 A. Probably.  
 19 Q. How about Judge Carey? Have you  
 20 ever appeared before him in a contested  
 21 proceeding on behalf of a client?  
 22 MR. BRESSLER: I'll object to  
 23 the form.  
 24 THE WITNESS: Yes.  
 25 BY MR. PETERS:

Pages 21 to 24

Page 81

1 MICHAEL L. TEMIN, ESQUIRE  
 2 form.  
 3 THE WITNESS: If I know there  
 4 was information I don't have, the answer  
 5 is yes.  
 6 BY MR. PETERS:  
 7 Q. Then under those circumstances,  
 8 you'd ask the client for it?  
 9 A. Yes.  
 10 Q. Okay. Sticking with the same  
 11 hypothetical, I'd like you to further assume  
 12 that the CEO of this company serves as a paid  
 13 consultant to one of the company's largest  
 14 creditors and that fact is disclosed in the  
 15 disclosure statement.  
 16 Should the disclosure statement also  
 17 contain the terms of the CEO's contract with  
 18 the creditor and the amount that the CEO is  
 19 being paid by the creditor?  
 20 MR. BRESSLER: I'll object to  
 21 the form.  
 22 THE WITNESS: Probably.  
 23 BY MR. PETERS:  
 24 Q. When you give that opinion, are you  
 25 drawing on your expertise and knowledge as an

Page 83

1 MICHAEL L. TEMIN, ESQUIRE  
 2 THE WITNESS: No. I have no  
 3 idea.  
 4 BY MR. PETERS:  
 5 Q. In your opinion, if a member of the  
 6 board of a company filing for bankruptcy is  
 7 also the president of the company's largest  
 8 creditor, should that fact be contained in the  
 9 disclosure statement?  
 10 A. Say it again, please.  
 11 Q. If a member of the board of  
 12 directors of a company filing for bankruptcy  
 13 is the most senior executive of the company's  
 14 largest creditor, should that fact be  
 15 disclosed in the disclosure statement?  
 16 A. Yes.  
 17 Q. What if under those same facts the  
 18 board member had resigned his position on the  
 19 board two weeks before the bankruptcy filing?  
 20 Should that relationship still be disclosed in  
 21 the disclosure statement?  
 22 A. I think I've gone as far as I'm  
 23 going in terms of answering questions that  
 24 have nothing to do with my opinion. And I'm  
 25 not going to respond to that.

Page 82

1 MICHAEL L. TEMIN, ESQUIRE  
 2 attorney?  
 3 MR. BRESSLER: I'll object to  
 4 the form, and I'll object to the word  
 5 "opinion." He wasn't giving an opinion;  
 6 he was answering a question. And he can  
 7 answer.  
 8 MR. PETERS: Fair enough. I'll  
 9 rephrase it.  
 10 BY MR. PETERS:  
 11 Q. In answering that question, were you  
 12 drawing on your expertise as an attorney?  
 13 A. Yes.  
 14 Q. Sticking with that same  
 15 hypothetical, assume that the Bankruptcy Court  
 16 denies confirmation of the plan because the  
 17 CEO's relationship with the creditor is an  
 18 actual conflict of interest in the view of the  
 19 Bankruptcy Court, even though the plan was  
 20 otherwise confirmable.  
 21 Was the attorney under that  
 22 hypothetical in any way responsible for the  
 23 denial of the plan?  
 24 MR. BRESSLER: Object to the  
 25 form. He can answer.

Page 84

1 MICHAEL L. TEMIN, ESQUIRE  
 2 Q. So you're going to refuse to answer  
 3 that?  
 4 A. I'm going to refuse to answer. And  
 5 I'd be delighted for you to seek a ruling on  
 6 that question. Now is a good time for you to  
 7 do that.  
 8 Q. Do you understand the relationship  
 9 to this case of the hypotheticals that I've  
 10 been asking you?  
 11 MR. BRESSLER: Object to the  
 12 form.  
 13 THE WITNESS: Yes.  
 14 BY MR. PETERS:  
 15 Q. So you understand that the  
 16 hypotheticals that I've been asking you are,  
 17 in fact, related to the facts of this case?  
 18 MR. BRESSLER: Object to the  
 19 form.  
 20 THE WITNESS: Yes.  
 21 BY MR. PETERS:  
 22 Q. Have a look at your -- Temin Exhibit  
 23 1, which is in front of you, if you don't  
 24 mind, sir.  
 25 A. (Witness complies.)

Pages 81 to 84

## Page 133

1 MICHAEL L. TEMIN, ESQUIRE  
 2 I'm not sure as I read the language -- I'm not  
 3 so sure that I do understand it.  
 4 The language seems to say that the  
 5 -- for their \$40 million, the noteholders will  
 6 be getting preferred stock in Coram.  
 7 Q. Was this the payment that you were  
 8 referring to earlier when we were discussing  
 9 your conversation with Mr. Shestack and his  
 10 testimony about a settlement with the  
 11 noteholders?  
 12 A. I didn't discuss with Mr. Shestack  
 13 the substance of the settlement between the  
 14 noteholders and the Trustee. The only thing I  
 15 discussed with him was the bankruptcy process.  
 16 Q. But I believe you testified -- and  
 17 correct me if I'm wrong -- that you understood  
 18 when you discussed with him the bankruptcy  
 19 process, that he was testifying about the  
 20 fairness or appropriateness of the settlement  
 21 between the Trustee and the noteholders which  
 22 involved \$56 million?  
 23 A. Yes.  
 24 Q. And is that the same \$56 million  
 25 event that's being discussed here in this

## Page 134

1 MICHAEL L. TEMIN, ESQUIRE  
 2 e-mail from  
 3 Mr. Bressler?  
 4 A. I assume so.  
 5 MR. PETERS: What time is it  
 6 now? It's five minutes of 1:00. Why  
 7 don't we -- as planned, why don't we take  
 8 our luncheon recess now and go off the  
 9 record.  
 10 THE VIDEOGRAPHER: We're now  
 11 going off the videotape record. The  
 12 time, 12:54 and 33 seconds.  
 13 (Lunch break.)  
 14 THE VIDEOGRAPHER: We are now  
 15 back on the videotape record. The time,  
 16 1:53.  
 17 BY MR. PETERS:  
 18 Q. Prior to the time that you prepared  
 19 your report in this case, Temin-1, what did  
 20 you understand your assignment to be?  
 21 A. Just what I stated in the first  
 22 paragraph.  
 23 Q. So just tell us in your own words  
 24 what your assignment was.  
 25 A. Presented with the plan of

## Page 135

1 MICHAEL L. TEMIN, ESQUIRE  
 2 reorganization that was the first amended and  
 3 restated joint plan, would Judge Walrath have  
 4 confirmed it if Crowley and Cerberus Partners  
 5 did not have the contractual and other  
 6 relationships that they had.  
 7 Q. Is that the full scope of your  
 8 assignment?  
 9 A. Yes.  
 10 Q. Who gave you that assignment?  
 11 A. Mr. Bressler.  
 12 Q. When did you receive it?  
 13 A. Some time in 2006. Summer 2006, I  
 14 think.  
 15 Q. Okay. And how did you go about  
 16 doing your work? What did you do?  
 17 A. Read some pleadings and all of the  
 18 notes of testimony on the confirmation  
 19 hearings, Court's opinions, and the other  
 20 documents that are referenced in my opinion.  
 21 Q. So you read all those materials?  
 22 A. Yes.  
 23 Q. And then what did you do?  
 24 A. Thought about it and then wrote my  
 25 opinion.

## Page 136

1 MICHAEL L. TEMIN, ESQUIRE  
 2 Q. What else did you do? Anything?  
 3 A. No.  
 4 Q. What -- what deposition testimony  
 5 taken in this case have you read?  
 6 A. I haven't read any.  
 7 Q. Have you ever read any testimony  
 8 given by David Friedman?  
 9 A. No.  
 10 Q. Have you ever read any testimony  
 11 given by Richard Levy?  
 12 A. No.  
 13 Q. Have you ever read any testimony  
 14 given by Arlin Adams?  
 15 A. I can't recall. I may have read  
 16 some testimony by Judge Adams, but I can't  
 17 remember whether it was in one of the hearings  
 18 or depositions.  
 19 Q. How much time have you spent on the  
 20 matter altogether?  
 21 A. I don't recall.  
 22 Q. Can you give us your best estimate?  
 23 A. 20 or 30 hours.  
 24 Q. Was most of that time spent reading?  
 25 A. Yes.

Page 141

1 MICHAEL L. TEMIN, ESQUIRE  
2 Q. Does a court, a bankruptcy court,  
3 have considerable judicial discretion in  
4 determining whether a particular bankruptcy  
5 plan was proposed in good faith?  
6 A. Within the confines of the statute.  
7 Q. Does a -- does a bankruptcy court,  
8 in deciding whether to confirm a plan of  
9 reorganization, evaluate the totality of  
10 circumstances surrounding a plan?  
11 A. No.  
12 Q. In so doing, does a court have  
13 considerable judicial discretion in finding  
14 good faith?  
15 A. Since I disagreed with your first  
16 statement, I have trouble agreeing with your  
17 second.  
18 Q. Okay. Does a court, in evaluating a  
19 plan, have considerable judicial discretion in  
20 finding good faith?  
21 A. It has discretion based upon what is  
22 presented to it, and that is the one element  
23 of confirmation that can be found without any  
24 evidence.  
25 Q. Is the most important feature of an

Page 142

1 MICHAEL L. TEMIN, ESQUIRE  
2 inquiry into good faith the fundamental  
3 fairness of the plan?  
4 A. No.  
5 Q. What is the most important feature  
6 with respect to the good faith of a plan?  
7 A. Good faith of a plan? I don't  
8 understand the concept.  
9 Q. Into the fundamental fairness of a  
10 plan; I'm sorry.  
11 A. Fundamental fairness is not one of  
12 the confirmation elements.  
13 Q. So fundamental fairness isn't  
14 something that a bankruptcy court would  
15 consider --  
16 MR. BRESSLER: Object to the  
17 form.  
18 BY MR. PETERS:  
19 Q. -- in determining whether to confirm  
20 a plan?  
21 A. That is correct.  
22 Q. Tell me whether you agree or  
23 disagree with the following statement: In  
24 evaluating the totality of circumstances  
25 surrounding a plan, a court has considerable

Page 143

1 MICHAEL L. TEMIN, ESQUIRE  
2 judicial discretion in finding good faith,  
3 with the most important feature being an  
4 inquiry into the fundamental fairness of the  
5 plan.  
6 A. I disagree.  
7 Q. You consider yourself an expert on  
8 the decision-making of Judge Mary Walrath?  
9 A. No. I consider myself expert on  
10 determining what she would do in a particular  
11 circumstance that's been submitted.  
12 Q. Have you ever read Judge Walrath's  
13 written plan -- written opinion on the second  
14 joint plan of reorganization dated August 20,  
15 2001 submitted to the Court by Coram?  
16 A. Yes.  
17 Q. The statement that I just read to  
18 you that you disagreed with comes from Judge  
19 Walrath's opinion in that case. Are you aware  
20 of that?  
21 A. No.  
22 Q. Would it surprise you to learn that?  
23 A. I'll take your representation.  
24 Q. But does it surprise you that that  
25 statement that you just disagreed with came

Page 144

1 MICHAEL L. TEMIN, ESQUIRE  
2 from Judge Walrath?  
3 A. Yes.  
4 Q. Do you believe that statement is  
5 incorrect? I'll read it again if you'd like.  
6 MR. BRESSLER: Object to form.  
7 THE WITNESS: I'd like you to  
8 read it in context.  
9 BY MR. PETERS:  
10 Q. Let me just read it to you.  
11 "In evaluating the totality of  
12 circumstances surrounding a plan, a court has  
13 considerable judicial discretion in finding  
14 good faith, with the most important feature  
15 being an inquiry into the fundamental fairness  
16 of the plan."  
17 Do you think that's incorrect? I'm  
18 reading from Judge Walrath's opinion on Page  
19 12.  
20 A. I don't think fundamental fairness  
21 is one of the confirmation standards.  
22 Q. So you think that that statement of  
23 the law is incorrect?  
24 A. I think it's overbroad.  
25 Q. You formed the opinion, I believe,

Pages 141 to 144

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Page 145

1 MICHAEL L. TEMIN, ESQUIRE  
 2 that the Bankruptcy Court would have confirmed  
 3 the plan in the absence of a Crowley-Cerberus  
 4 relationship, although it might have required  
 5 a modification of the plan release. I'm just  
 6 reading from your report there. Is that  
 7 right?  
 8 A. Yes.  
 9 Q. And in the prior paragraph, you used  
 10 the statement "but for" the relationship  
 11 between Crowley and Cerberus, and in essence,  
 12 as I understand your opinion, you're saying  
 13 but for the relationship between Crowley and  
 14 Cerberus, the plan would have been confirmed?  
 15 A. Yes.  
 16 Q. Do you agree with the following  
 17 statement: That but for the efforts of the --  
 18 but for the appointment of an Equity Committee  
 19 in Coram's bankruptcy, the plan would have  
 20 been confirmed?  
 21 MR. BRESSLER: Object to the  
 22 form.  
 23 THE WITNESS: No.  
 24 BY MR. PETERS:  
 25 Q. Do you agree with the following

Page 146

1 MICHAEL L. TEMIN, ESQUIRE  
 2 statement: But for the work of Richard Levy  
 3 on behalf of the interest of the shareholders,  
 4 the plan would have been confirmed?  
 5 MR. BRESSLER: Same objection  
 6 to form.  
 7 THE WITNESS: I can't tell.  
 8 BY MR. PETERS:  
 9 Q. Why can't you tell?  
 10 A. Because I don't know whether the  
 11 information about the Crowley-Cerberus  
 12 relationship would have been presented to the  
 13 Court, even if  
 14 Mr. Levy hadn't been involved in the case.  
 15 Q. Do you think the relationship about  
 16 the Crowley-Cerberus relationship would have  
 17 been presented to the Court if there had been  
 18 no Equity Committee?  
 19 A. Yes.  
 20 Q. Who would have presented it to the  
 21 Court?  
 22 A. Among other things, Mr. Levy.  
 23 Q. On whose behalf would Mr. Levy have  
 24 presented it to the Court?  
 25 A. The shareholders whom he was

Page 147

1 MICHAEL L. TEMIN, ESQUIRE  
 2 representing.  
 3 Q. Do you know who they were?  
 4 A. No.  
 5 Q. You don't know anything about any of  
 6 the shareholders that Mr. Levy was  
 7 representing?  
 8 A. No.  
 9 Q. Have you ever heard of a fellow  
 10 named Sam Zell?  
 11 A. Yes.  
 12 Q. Do you know who he is?  
 13 A. I know he is a Chicago-based  
 14 investor.  
 15 Q. Was he one of the people that Mr.  
 16 Levy was representing?  
 17 A. I don't know.  
 18 Q. How about Wil Weinstein? Do you  
 19 know who he is?  
 20 A. No.  
 21 Q. Ever heard of something called the  
 22 Lurie Trust?  
 23 A. Not that I recall.  
 24 Q. How about Sam's Stock, L.L.C.? Do  
 25 you know what that is?

Page 148

1 MICHAEL L. TEMIN, ESQUIRE  
 2 A. No.  
 3 Q. Tell me whether or not you agree  
 4 with the following statement: But for the  
 5 advice and representation Coram received in  
 6 connection with the preparation and filing of  
 7 its first bankruptcy plan, that plan would  
 8 have been approved.  
 9 MR. BRESSLER: Object to the  
 10 form.  
 11 THE WITNESS: I disagree.  
 12 BY MR. PETERS:  
 13 Q. Do you think if Coram had received  
 14 better representation in connection with its  
 15 first plan of reorganization that the plan  
 16 would have been approved?  
 17 MR. BRESSLER: Object to the  
 18 form.  
 19 THE WITNESS: I don't know.  
 20 BY MR. PETERS:  
 21 Q. Do you think it's possible that a  
 22 different lawyer could have made a difference  
 23 in the outcome of that plan?  
 24 MR. BRESSLER: Object to the  
 25 form again.

Pages 145 to 148

## Page 149

1 MICHAEL L. TEMIN, ESQUIRE  
 2 THE WITNESS: If you change the  
 3 facts, you might change the results.  
 4 BY MR. PETERS:  
 5 Q. Aren't you changing the facts when  
 6 you posed the hypothetical to yourself of  
 7 whether the plan would have been approved if  
 8 Crowley and Cerberus didn't have the  
 9 relationship?  
 10 A. Yes.  
 11 Q. And isn't that inherent in the work  
 12 that you're doing; that you're going to change  
 13 the facts and draw conclusions about what  
 14 would have happened in a different situation?  
 15 A. In one different situation, yes.  
 16 Q. So what I'm asking you to do is  
 17 change the facts and imagine -- and assume a  
 18 different lawyer -- yourself, perhaps --  
 19 represented Coram in the bankruptcy.  
 20 If you had represented Coram in  
 21 connection with the preparation and submission  
 22 of its first plan of reorganization, would the  
 23 outcome have been different?  
 24 A. Are we changing any other fact or  
 25 just that one?

## Page 151

1 MICHAEL L. TEMIN, ESQUIRE  
 2 and then the client would have to agree.  
 3 Q. What would you have recommended to  
 4 the client?  
 5 MR. BRESSLER: Object to the  
 6 form.  
 7 THE WITNESS: What I discussed  
 8 earlier; that is, having Crowley removed  
 9 from the plan negotiations and an  
 10 independent committee of the board with  
 11 knowledge of the Crowley-Cerberus  
 12 relationship involved and then see  
 13 whether or not the result at that point  
 14 would have been the same plan or a  
 15 different plan.  
 16 BY MR. PETERS:  
 17 Q. Do you know whether or not Crowley  
 18 was removed from negotiations with the  
 19 noteholders in connection with the first plan?  
 20 A. I do not believe he was.  
 21 Q. Do you think the outcome of the  
 22 Coram -- if you were representing Coram, you  
 23 could have gotten a different outcome on the  
 24 first plan of reorganization?  
 25 MR. BRESSLER: Object to form.

## Page 150

1 MICHAEL L. TEMIN, ESQUIRE  
 2 Q. Oh, we're not changing any other  
 3 facts other than that you might have done  
 4 things differently than Mr. Friedman.  
 5 A. Then we are starting to change other  
 6 facts.  
 7 Q. Well, I'm asking you to answer the  
 8 question.  
 9 A. I'm saying that I don't know the  
 10 answer to that question because it would have  
 11 depended upon what other facts we changed.  
 12 Q. Okay. If you had represented Coram  
 13 in the bankruptcy, would you have done  
 14 anything differently than Mr. Friedman did?  
 15 MR. BRESSLER: Object to form.  
 16 THE WITNESS: I would hope so.  
 17 BY MR. PETERS:  
 18 Q. What would you have done  
 19 differently?  
 20 A. I would have known more about the  
 21 Coram-Cerberus (sic) relationship and taken  
 22 some action in response to that knowledge.  
 23 Q. What action would you have taken?  
 24 A. A variety, but it would have  
 25 depended upon my recommendation to the client

## Page 152

1 MICHAEL L. TEMIN, ESQUIRE  
 2 THE WITNESS: I don't know  
 3 whether it would have been the same plan.  
 4 BY MR. PETERS:  
 5 Q. As you sit here, do you see any need  
 6 to have changed the plan?  
 7 A. Whether it would have needed to  
 8 change the plan would have depended upon what  
 9 Coram wanted to do on the one hand, what the  
 10 noteholders wanted to do on the other hand.  
 11 And if you change one of the facts, I don't  
 12 know what other facts might change as a  
 13 result.  
 14 Q. I'm not changing -- do you have any  
 15 reason to believe that Coram or the  
 16 noteholders wanted anything differently than  
 17 what was in the first plan?  
 18 A. I have no reason to believe either  
 19 way.  
 20 Q. The only thing we are changing is  
 21 the identity of the attorney representing  
 22 Coram.  
 23 A. No. You want me then to change some  
 24 of the other facts as a result of becoming the  
 25 attorney for Coram.



Temin, Esq., Michael L.

8/6/2007

Page 153

1 MICHAEL L. TEMIN, ESQUIRE

2 Q. Well, if you think that you would  
3 have changed some of the other facts based  
4 upon becoming the attorney for Coram...

5 If -- can you predict -- you've told  
6 us that you can predict what a federal judge  
7 will do in a case. I'm asking whether, as a  
8 lawyer, you could have changed the outcome of  
9 the first confirmation plan of the Coram  
10 bankruptcy.

11 MR. BRESSLER: Object to the  
12 form.

13 THE WITNESS: And I'm telling  
14 you that, as a lawyer, all I can do is  
15 recommend things to the client.

16 BY MR. PETERS:

17 Q. Okay. Assume the client would have  
18 followed all of your recommendations.

19 A. Then we might have had a different  
20 plan or we might have had the same plan. I  
21 don't know.

22 Q. So you don't know whether you would  
23 have done anything differently than Mr.  
24 Friedman did?

25 A. That isn't what I said.

Page 154

1 MICHAEL L. TEMIN, ESQUIRE

2 Q. Well, would you have done anything  
3 differently than what Mr. Friedman did?

4 A. I think I have said that before.

5 Q. And do you think that that would  
6 have caused a different outcome in the plan?

7 A. I don't know.

8 Q. Why not?

9 A. Because I don't know what the client  
10 to whom I would have made recommendations  
11 would have done.

12 Q. But I've asked you to assume they  
13 would follow you -- all your recommendations.

14 A. Then the question is: Once that  
15 happened, would the result have been the same  
16 in the negotiations between Coram and the  
17 noteholders.

18 Q. About the contents of the plan, you  
19 mean?

20 A. That's correct.

21 Q. Okay. Assume that they would have  
22 been the same. Would you have been able to  
23 get that plan confirmed?

24 MR. BRESSLER: Object to the  
25 form.

Page 155

1 MICHAEL L. TEMIN, ESQUIRE

2 THE WITNESS: Yes.

3 BY MR. PETERS:

4 Q. How would you have gone about  
5 getting that plan confirmed?

6 A. By removing the Crowley-Cerberus  
7 relationship, and by having the plan negotiated  
8 between people that did not involve Crowley  
9 and by having a disclosure of all of those  
10 facts, including Crowley's prior relationship,  
11 which would have been discontinued at that  
12 point between Crowley and Cerberus.

13 Q. And -- and if you had done those  
14 things, it's your opinion, then, the plan  
15 would have been confirmed?

16 A. Yes.

17 MR. PETERS: Let's mark this,  
18 if you don't mind, Michelle, as the next  
19 exhibit, Temin-4.

20 (Document marked for  
21 identification as Exhibit Temin-4.)

22 BY MR. PETERS:

23 Q. I think you've been shown what's  
24 been marked as Temin-4. It's a set of Coram  
25 Healthcare board of directors minutes dated

Page 156

1 MICHAEL L. TEMIN, ESQUIRE

2 July 31st of 2000.

3 I'd ask you -- have you ever seen  
4 this document before?

5 A. No.

6 Q. I ask you to -- you can read any  
7 part of it you'd like, but I'm going to ask  
8 you questions about a portion of it that  
9 starts on Page 7.

10 A. All right. I've read it.

11 Q. Have you had a chance to read the  
12 portion of Page 7 under the subheading,  
13 Special Committee?

14 A. Yes.

15 Q. Did Coram's board on or about July  
16 31st of 2000 create a special committee of  
17 directors to review any preliminary agreement  
18 or understanding reached between Coram and the  
19 noteholders?

20 MR. BRESSLER: Object to the  
21 form.

22 THE WITNESS: Yes.

23 BY MR. PETERS:

24 Q. Is that something that you weren't  
25 aware of prior to reading this?

Pages 153 to 156

Temin, Esq., Michael L.

8/6/2007

Page 241

1	
2	EXHIBITS (Cont'd.)
3	
4	NO. DESCRIPTION PAGE
5	Exhibit 10 Transcript from Court 203
6	12/21/00
7	Exhibit 11 Expert Report of 217
8	Dworetzky
9	
10	---
11	
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Page 242

I have read the foregoing transcript of my video deposition given on AUGUST 6, 2007, and it is true, correct and complete, to the best of my knowledge, recollection and belief, except for the corrections noted hereon and/or list of corrections, if any, attached on a separate sheet herewith.

\_\_\_\_\_  
MICHAEL L. TEMIN, ESQUIRE

Subscribed and sworn to  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

Page 243

CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the video deposition of MICHAEL L. TEMIN, ESQUIRE, taken on AUGUST 6, 2007, and that this is a true and correct transcript of same.

\_\_\_\_\_  
MICHELLE L. GRAY, CSR  
and Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of same by any means, unless under the direct control and/or supervision of the certifying reporter.)

Pages 241 to 243

# Exhibit D

Victor, Esq., J. Scott

8/7/2007

Page 1	Page 2
<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>ARLIN M. ADAMS, Chapter 11 Trustee of the Post-Confirmation Bankruptcy Estates of CORAM HEALTHCARE CORPORATION, a Delaware Corporation, and of CORAM INC., a Delaware Corporation Plaintiff vs. DANIEL D. CROWLEY; DONALD J. AMARAL; WILLIAM J. CASEY; L. PETER SMITH; AND SANDRA L. SMOLEY, Defendants</p> <p>Philadelphia, Pennsylvania, Tuesday, August 7, 2007</p> <p>Video deposition of J. SCOTT VICTOR, ESQUIRE, taken pursuant to notice, at Schnader, Harrison, Segal &amp; Lewis, 1600 Market Street, Suite 3600, on the above date, beginning at approximately 9:46 a.m., before Michelle L. Gray, Certified Shorthand Reporter and Notary Public.</p>	<p>1 2 APPEARANCES: 3 Counsel for Plaintiffs Schnader, Harrison, Segal &amp; Lewis 4 BARRY E. BRESSLER, ESQ. 1600 Market Street, Suite 3600 5 Philadelphia, Pennsylvania 19103 (215) 751-2572 6 bbressler@schnader.com</p> <p>7 Counsel for Defendants 8 Keker &amp; Van Nest, LLP ELLIOT R. PETERS, ESQ. 9 710 Sansome Street San Francisco, California 94111 (415) 391-5400 10 epeters@kvn.com</p> <p>11 ALSO PRESENT: Gerard Alfe, Videographer 12 13 14 15 16 17 18 19 20 21 22 23 24 25 (INDEX at end of transcript.)</p>
Page 3	Page 4
<p>1 2 THE VIDEOGRAPHER: This 3 videotape deposition is now beginning. 4 The date, August 7, 2007. The time, 5 9:46. 6 This is the videotape 7 deposition of J. Scott Victor taken in 8 the matter of Adams versus Crowley, et 9 al., in the United States District Court 10 for the District of Delaware, Case No. 11 04-1565 (SLR). 12 The court reporter is Michelle 13 Gray. I'm the video operator. My name 14 is Gerard Alfe. This deposition is 15 taking place at 1600 Market Street, 16 Philadelphia, PA; 19103. 17 Counsel will now introduce 18 themselves. 19 MR. PETERS: Elliot Peters on 20 behalf of Daniel Crowley. 21 MR. BRESSLER: Barry Bressler 22 on behalf of Arlin M. Adams, the Chapter 23 11 Trustee. 24 (Documents pre-marked for 25 identification as Exhibits Victor-1</p>	<p>1 J. SCOTT VICTOR, ESQUIRE 2 through Victor-4.) 3 ... J. SCOTT VICTOR, ESQUIRE, 4 having been first duly sworn, was 5 examined and testified as follows: 6 EXAMINATION 7 BY MR. PETERS: 8 Q. Mr. Victor, good morning. 9 A. Good morning. 10 Q. How are you employed, sir? 11 A. I am -- why don't you -- why don't 12 we hold off for a second. 13 MR. PETERS: Do you want to 14 just go off the record for a minute, for 15 a second? 16 THE WITNESS: No. 17 BY MR. PETERS: 18 Q. Okay. We'll take it from the top. 19 We had a little unexpected interruption. Now 20 let's do the question. 21 How are you employed, sir? 22 A. I'm the senior managing director and 23 co-head of the Special Situations Group of 24 National City Investment Banking. 25 Q. Where is that located?</p>

Pages 1 to 4

Victor, Esq., J. Scott

8/7/2007

Page 17

1 J. SCOTT VICTOR, ESQUIRE

2 A. I'm doing it, number one, because I  
3 was involved in this case, and I'm intimately  
4 familiar with this case since the fall of 2002  
5 when I was first hired. And I'm doing it  
6 because I was asked to do it. And my  
7 particular expertise is very fitting for this  
8 case.

9 Q. How many hours have you spent on  
10 this engagement?

11 A. I would say, myself, probably 30 to  
12 40 hours, closer to 40 since May. And my  
13 colleague, Michael Goodman, I would say  
14 probably 30 hours.

15 Q. What is your hourly rate?

16 A. My hourly rate as I proposed to the  
17 Trustee is \$695 an hour.

18 Q. Did they agree to that?

19 A. They've agreed on it for my hourly  
20 rate. The Trustee has not yet agreed to the  
21 hourly rate requested for a director, Mr.  
22 Goodman, who helped me with this assignment.

23 Q. What's his hourly rate?

24 A. \$695.

25 Q. What's his background?

Page 18

1 J. SCOTT VICTOR, ESQUIRE

2 A. Mr. Goodman worked on this case with  
3 me from 2002 on; intimately familiar with this  
4 case. He's a director. He was a director at  
5 SSG Capital Advisors. Then when we were  
6 acquired by National City, he became a  
7 director of National City Investment Banking,  
8 and he's in the Special Situations Group.  
9 He's been an investment banker his entire  
10 career, probably since the late '90s, I would  
11 say; '97, '98.

12 Q. How old is he?

13 A. I think Michael Goodman is in his  
14 mid to late 30s.

15 Q. And you say it's unfortunate that  
16 you're charging by the hour because you can  
17 make more money doing other things than \$695  
18 an hour working on this case?

19 A. It's not a question of making more  
20 money. It's just that investment bankers  
21 don't like to charge and keep time sheets.  
22 It's just not what we do. We do deals.

23 Q. And when you do deals, you make more  
24 on an hourly basis than \$695 an hour?

25 MR. BRESSLER: Objection to

Page 19

1 J. SCOTT VICTOR, ESQUIRE

2 form. He can answer.

3 THE WITNESS: I wish that were  
4 always the case, but it's not. There's  
5 many cases where it's a small matter or a  
6 smaller M&A assignment or a small  
7 financing assignment, and they take just  
8 as long as large assignments, but the fee  
9 is significantly lower.

10 So, no, I can't say that --  
11 bless you -- I can't say that I make any  
12 more -- bless you -- on an hourly basis  
13 in all of my investment banking  
14 assignments.

15 BY MR. PETERS:

16 Q. What has Michael Goodman done in  
17 connection with your assignment in this case?

18 A. Michael Goodman reviewed all the  
19 documents that are referenced in the expert  
20 report, and he did the first draft of the  
21 expert report.

22 Q. So the first draft of your report  
23 was actually written by Michael Goodman?

24 A. Yes.

25 Q. What did you do after he wrote the

Page 20

1 J. SCOTT VICTOR, ESQUIRE

2 first draft of your expert report?

3 A. I similarly reviewed all the  
4 documents that are referenced in the expert  
5 report, and I edited it and revised and made  
6 the expert report my work product.

7 Q. And you did that by reading what he  
8 wrote and revising it?

9 A. Yes, and also adding to it, based  
10 upon my review of all the documents.

11 Q. Did you revise it in long hand? Did  
12 you make your edits in --

13 A. No. On the computer.

14 Q. So you took his draft on the  
15 computer and then put in words or phrases that  
16 you wanted to put in?

17 A. Yes.

18 Q. How much of what's in the report was  
19 -- what's in the final report was written by  
20 Michael Goodman as opposed to you?

21 MR. BRESSLER: Object to the  
22 form.

23 THE WITNESS: The -- a good  
24 portion of it. A very good portion of it  
25 was as originally compiled.

Pages 17 to 20

Page 21

1 J. SCOTT VICTOR, ESQUIRE  
 2 BY MR. PETERS:  
 3 Q. 80 percent?  
 4 A. 60 percent.  
 5 Q. Is Michael Goodman a lawyer?  
 6 A. He is not a lawyer.  
 7 Q. So he didn't bring any legal  
 8 training to bear in drafting the report?  
 9 A. No. Special situation investment  
 10 banking.  
 11 Q. Does Michael Goodman have a graduate  
 12 degree, to your knowledge?  
 13 A. He does not.  
 14 Q. Where did he go to school as an  
 15 undergrad?  
 16 A. University of Michigan, I believe.  
 17 Q. How long has he worked for you?  
 18 A. He has worked for me ever since I  
 19 became an investment banker in 2000, when I  
 20 left Saul Ewing to go to Berwind Financial as  
 21 an investment banker, and he was an analyst at  
 22 Berwind when I arrived on March 1st, 2000.  
 23 Q. You went to the University of Miami  
 24 Law School?  
 25 A. I did.

Page 22

1 J. SCOTT VICTOR, ESQUIRE  
 2 Q. And you graduated in '83?  
 3 A. '83.  
 4 Q. What law firms did you work for  
 5 after graduating from law school?  
 6 A. I worked first for Melvin Lashner  
 7 Associates. Mel Lashner was a former senior  
 8 partner and one of the deans of the old law  
 9 bankruptcy bar. He was a senior partner at  
 10 the firm, Adelman Levine, which is a  
 11 well-known bankruptcy boutique. He split off  
 12 and formed his own firm in 1981, I believe.  
 13 He hired me right out of law school  
 14 in 1983. The firm changed names in 1986 to  
 15 Lashner, Victor and Maschmeyer and lasted from  
 16 1986 to 1990, when Mr. Maschmeyer and I left  
 17 and went to another firm that became Shaiman,  
 18 Phelan, Victor and Maschmeyer in 1990, I  
 19 believe.  
 20 In 1991, still at that firm,  
 21 Mr. Maschmeyer left, and that firm became  
 22 Shaiman, Phelan, Victor, Schwartz and  
 23 Krekstein, I believe. And then I went to Saul  
 24 Ewing January 1st, 1992, first as special  
 25 counsel, and then October of that same year

Page 23

1 J. SCOTT VICTOR, ESQUIRE  
 2 was elected to full equity partner and was an  
 3 equity partner in Saul Ewing until the last  
 4 day of February 2000 when I became an  
 5 investment banker.  
 6 Q. Where was the Lachner (ph.) Firm?  
 7 A. Lashner.  
 8 Q. I'm sorry. Was the Lashner firm in  
 9 Delaware or in Philly?  
 10 A. Philadelphia.  
 11 Q. And the Saul Ewing firm, where was  
 12 that?  
 13 A. Saul Ewing is based here in  
 14 Philadelphia, but there's multiple locations  
 15 around the mid Atlantic: Wilmington,  
 16 Delaware; Harrisburg, Pennsylvania; Princeton;  
 17 Baltimore.  
 18 Q. Are you admitted to the Bar of  
 19 Pennsylvania?  
 20 A. Yes.  
 21 Q. Are you still an active member of  
 22 the Bar?  
 23 A. Yes.  
 24 Q. Are you admitted to the bars of any  
 25 other state?

Page 24

1 J. SCOTT VICTOR, ESQUIRE  
 2 A. No. But I am admitted to the Bar of  
 3 the district outside of Pennsylvania. I'm  
 4 admitted to the Bar, I believe, of the Eastern  
 5 District of Michigan.  
 6 Q. That would be -- you're admitted to  
 7 practice in the Federal Court there?  
 8 A. Yes.  
 9 Q. But are you -- but you were not a  
 10 member of the bar of any state other than  
 11 Philadelphia -- Pennsylvania?  
 12 A. Pennsylvania. Commonwealth of  
 13 Pennsylvania since 1983.  
 14 Q. You're not a member of the Bar of  
 15 the State of Delaware?  
 16 A. I am not, though I routinely  
 17 practice there as a lawyer and routinely have  
 18 investment banking assignments with bankruptcy  
 19 cases in Delaware.  
 20 Q. But you are not and never have been  
 21 a member of the --  
 22 A. Of Delaware, no.  
 23 Q. Do you know whether or not this case  
 24 involves the law of Delaware or of some other  
 25 jurisdiction?



Victor, Esq., J. Scott

8/7/2007

Page 129

1 J. SCOTT VICTOR, ESQUIRE

2 Let me rephrase and be more  
3 specific.

4 How do you come up with the terminal  
5 value multiple number, that 7.2 number that's  
6 there on Page 30?

7 A. It's a spread. And you're looking  
8 at different spreads to make sure that you're  
9 discounted cash flow analysis is within the  
10 realm of reasonableness. And it's essentially  
11 taking that same multiple that we used on Page  
12 16 and just testing your discounted cash flow.

13 Q. So, again, here, if someone were to  
14 use that number, approximately 10, to perform  
15 this analysis, you would think that's  
16 incorrect?

17 MR. BRESSLER: Object to the  
18 form.

19 THE WITNESS: Yes. I think so,  
20 yes. I don't remember this calculation  
21 exactly from four years ago, but 10 is  
22 not listed in our terminal value  
23 multiple. We go from 4.2 to 8.2 for a  
24 sensitivity analysis.

25 BY MR. PETERS:

Page 130

1 J. SCOTT VICTOR, ESQUIRE

2 Q. Okay. Let's have a look at Exhibit  
3 2, which I believe is your report. Do you  
4 have Victor-2 in front of you? You can place  
5 those other exhibits aside if you'd like, sir.

6 A. I have it.

7 Q. Mr. Bressler called you in May of  
8 '07?

9 A. Yes.

10 Q. When in May of '07?

11 A. First or second week.

12 Q. And what did he say?

13 A. I'd like you to be an expert in the  
14 Coram case again for the Crowley litigation.

15 Q. What else did he tell you?

16 A. We went over what the assignment  
17 would be, what documents I had to review, and  
18 what kind of expert report he was looking for.

19 Q. Okay. And what issues did he ask  
20 you to analyze and render opinions on?

21 A. The payments made by the company  
22 pre-bankruptcy to the noteholders. The  
23 confirmation or the confirmability of the  
24 first plan and the impact of not confirming  
25 that first plan. Performance of companies in

Page 131

1 J. SCOTT VICTOR, ESQUIRE

2 Chapter 11 generally. The Trustee's dealings  
3 with Mr. Crowley directly once the Trustee was  
4 appointed. And that's pretty much it. Those  
5 are the main topics of my expert report.

6 Q. And how much time did you spend  
7 discussing those issues with Mr. Bressler or  
8 anyone else acting on behalf of the Trustee?

9 A. The very first phone call, maybe 10,  
10 15 minutes. And then we had a subsequent  
11 conversation, and then we had a meeting in mid  
12 May.

13 Q. Who's "we"?

14 A. Myself, Mr. Goodman, Mr. Bressler,  
15 and I think Mr. Barkasy.

16 Q. Where did that meeting take place?

17 A. In my office.

18 Q. How long did it last?

19 A. I don't know because I was only  
20 there for a very short part of it. A few  
21 hours, I would imagine.

22 Q. How long were you there?

23 A. Less than an hour.

24 Q. What was discussed while you were  
25 there?

Page 132

1 J. SCOTT VICTOR, ESQUIRE

2 A. What was discussed was what kind of  
3 report they were looking for and what the  
4 focus should be and the focus, as I've stated,  
5 was those four items.

6 Q. Okay. The first item that you  
7 referred to is -- and it's listed in your  
8 report -- is unusual cash made -- payments  
9 made by Coram prior to Chapter 11 filing.

10 A. Mm-hmm.

11 Q. What documents, if any, did you rely  
12 on in connection with that opinion?

13 A. Well, the Court's opinions. I'm  
14 trying to see what else specifically.

15 The Goldin report. And that's  
16 pretty much it for that specific issue.

17 Q. So just the Bankruptcy Court  
18 opinions, the Goldin report, and what else?

19 A. And I think that's it.

20 Q. Okay.

21 A. Specifically for that issue.

22 I looked at -- I mean, it's hard to  
23 say what specific documents for each specific  
24 opinion, but these were all -- what's listed  
25 is all the documents reviewed to come up with

Pages 129 to 132

Victor, Esq., J. Scott

8/7/2007

Page 133

1 J. SCOTT VICTOR, ESQUIRE  
 2 this report.  
 3 Q. Okay. Now, you -- in your report on  
 4 that first page, you describe -- you use the  
 5 phrase that certain payments to noteholders  
 6 had the effect of reducing precious cash  
 7 needed in the Coram estate. Do you see that?  
 8 A. Yes.  
 9 Q. Then on the next page, you said that  
 10 -- the bottom of the first paragraph -- that  
 11 the cash payment depleted Coram of "much  
 12 needed cash." Do you see that?  
 13 A. Yes.  
 14 Q. You use the phrase, "precious cash  
 15 needed in the Coram estate," and you use the  
 16 phrase, "much needed cash"?  
 17 A. Yes.  
 18 Q. Did you write those portions of the  
 19 report or did Mr. Goodman?  
 20 A. I don't know who actually used those  
 21 words. I couldn't tell you that.  
 22 Q. Now, this is the issue --  
 23 A. But it is true.  
 24 Q. Okay. This is the issue we were  
 25 discussing --

Page 134

1 J. SCOTT VICTOR, ESQUIRE  
 2 A. Previously.  
 3 Q. -- a few minutes ago. And as it  
 4 turned out, Coram didn't need this cash,  
 5 right?  
 6 MR. BRESSLER: Object to the  
 7 form.  
 8 THE WITNESS: Well, Coram  
 9 didn't need the cash to ultimately do the  
 10 Trustee's plan of reorganization.  
 11 BY MR. PETERS:  
 12 Q. No, no, no. The Trustee's plan of  
 13 reorganization is in '04. We're talking about  
 14 what happened in 2000.  
 15 A. Well, you say that, but they did  
 16 need the cash. They didn't have \$15 million  
 17 of cash that they could have had for no  
 18 reason.  
 19 Q. Okay. But it was -- it was shortly  
 20 after the events that you're describing here  
 21 that Coram filed for bankruptcy, right?  
 22 A. Just within a few days.  
 23 Q. And they had a DIP -- debtor in  
 24 possession financing facility, right?  
 25 A. They did, from Cerberus.

Page 135

1 J. SCOTT VICTOR, ESQUIRE  
 2 Q. And they never drew a penny on that,  
 3 right?  
 4 A. Never drew on that.  
 5 Q. So they actually had enough cash to  
 6 handle whatever obligations they had shortly  
 7 after filing for bankruptcy, right?  
 8 MR. BRESSLER: Object to the  
 9 form.  
 10 THE WITNESS: They did have  
 11 enough cash, but there's no reason these  
 12 payments should have been made.  
 13 BY MR. PETERS:  
 14 Q. Well, we'll get to that in a second.  
 15 I'm still focusing on your use of the phrase,  
 16 "precious cash needed in the Coram estate" and  
 17 "much needed cash." Do you see that?  
 18 A. I do.  
 19 Q. And as it turned out, in fact, Coram  
 20 did not need that cash to function during the  
 21 balance of 2000, did they?  
 22 MR. BRESSLER: Object to the  
 23 form.  
 24 THE WITNESS: Because they got  
 25 lucky. There was no unforeseen

Page 136

1 J. SCOTT VICTOR, ESQUIRE  
 2 circumstance --  
 3 BY MR. PETERS:  
 4 Q. If you can properly characterize why  
 5 it happened, maybe you would be just kind  
 6 enough to answer my question.  
 7 Here's my question: As it turned  
 8 out, Coram didn't need that cash to function  
 9 during the balance of 2000, did it?  
 10 A. They didn't. But they were still  
 11 out 15 million of cash. And that harmed the  
 12 company.  
 13 Q. Okay. But they still -- I know that  
 14 you desire to inject your views here. But in  
 15 answer to my question, the fact is they didn't  
 16 need any cash other than what they had to  
 17 operate in 2000, did they?  
 18 MR. BRESSLER: Object to the  
 19 form.  
 20 THE WITNESS: They didn't need  
 21 it to pay claims. They didn't need it to  
 22 operate. But I said just what the Court  
 23 said. They are out 15 million. And they  
 24 didn't need to pay. And the company was  
 25 harmed by not having that 15 million of

Pages 133 to 136

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## Page 141

1 J. SCOTT VICTOR, ESQUIRE  
 2 more liquidity and more flexibility.  
 3 Q. Okay. But is there a single thing  
 4 you can identify that they would otherwise  
 5 have done in 2000 or 2001 that because they  
 6 didn't have that \$15 million, they were not  
 7 able to do?  
 8 MR. BRESSLER: Object to the  
 9 form.  
 10 THE WITNESS: I don't know the  
 11 answer to that. I wasn't around --  
 12 BY MR. PETERS:  
 13 Q. You don't know the answer as to  
 14 whether you're able to identify such a thing?  
 15 A. I don't know if there was anything  
 16 that they were able or not able to do as a  
 17 result of not having that 15 million of cash.  
 18 I can't identify anything. I wasn't around in  
 19 management in 2000.  
 20 Q. Is there any additional work that  
 21 you contemplate doing in order to be able to  
 22 answer that question?  
 23 A. No.  
 24 Q. So as you sit here today, is there  
 25 anything that you can identify that they would

## Page 142

1 J. SCOTT VICTOR, ESQUIRE  
 2 have done if they had had that \$15 million  
 3 that they couldn't do because they didn't?  
 4 MR. BRESSLER: Object to the  
 5 form, and it was just asked.  
 6 BY MR. PETERS:  
 7 Q. Either you can identify something or  
 8 you can't.  
 9 A. I cannot identify any specific thing  
 10 that Coram could not do because they didn't  
 11 have the cash, but I'd sure rather have 15.8  
 12 million of cash going into bankruptcy than  
 13 not.  
 14 Q. Was the board aware of the decision  
 15 to use the cash the way it was used by Coram  
 16 in the weeks before bankruptcy?  
 17 A. I believe so, though I don't know  
 18 for sure. But I believe they were aware.  
 19 Q. Have you considered -- have you  
 20 looked at any documents to learn about that?  
 21 A. I'm sure it was mentioned somewhere  
 22 that they were aware of it.  
 23 Q. Does it have any significance to you  
 24 whatever whether or not the board approved of  
 25 these decisions?

## Page 143

1 J. SCOTT VICTOR, ESQUIRE  
 2 MR. BRESSLER: Object to the  
 3 form.  
 4 THE WITNESS: None whatsoever.  
 5 BY MR. PETERS:  
 6 Q. Okay.  
 7 A. They shouldn't have paid the cash to  
 8 the noteholders, whether the board approved it  
 9 or not.  
 10 Q. According to what standard they  
 11 shouldn't have paid the cash to the  
 12 noteholders? That's just based on your --  
 13 A. Any standard -- any debtor going  
 14 into bankruptcy preserves cash to have maximum  
 15 liquidity and flexibility. They didn't have  
 16 15 million.  
 17 Q. Do you know David Friedman?  
 18 A. I do.  
 19 Q. And do you -- have you worked on  
 20 cases with him?  
 21 A. I worked on one case with him when I  
 22 practiced law very -- back in the mid '80s  
 23 when he was young.  
 24 Q. When he was young?  
 25 A. When we were both young.

## Page 144

1 J. SCOTT VICTOR, ESQUIRE  
 2 Q. He's the same age as you?  
 3 A. Identical age.  
 4 Q. Do you know whether he was aware of  
 5 the decisions that were being made?  
 6 A. I don't know.  
 7 Q. Have you made any effort to find  
 8 out?  
 9 A. If he was aware of those decisions?  
 10 Q. Yes.  
 11 A. No.  
 12 Q. Would it matter to you if he were  
 13 aware of the decision and approved of those  
 14 transactions?  
 15 A. It wouldn't matter to me.  
 16 Q. You've just told us that anybody  
 17 would have concluded it wasn't appropriate to  
 18 make those payments?  
 19 A. Those payments should have been --  
 20 those payments should not have been made  
 21 regardless of who approved it.  
 22 Q. So if David Friedman approved it, in  
 23 your view, he was committing malpractice?  
 24 MR. BRESSLER: Object to the  
 25 form.

Victor, Esq., J. Scott

8/7/2007

Page 161

1 J. SCOTT VICTOR, ESQUIRE  
 2 they paid down the revolver.  
 3 Q. Okay. But you would agree, would  
 4 you not, that the company's bankruptcy lawyers  
 5 at Casowitz, Benson, Torres and Friedman, LLP  
 6 were aware of that decision no later than June  
 7 9th of 2000?  
 8 A. I see that, yes.  
 9 Q. Are you aware of at any point the  
 10 company's bankruptcy lawyers at the Kasowitz  
 11 firm advising or instructing the company not  
 12 to make those payments?  
 13 A. Unaware.  
 14 Q. Have you made any efforts to find  
 15 out whether they did that?  
 16 A. Other than to go through David  
 17 Friedman's deposition, no.  
 18 Q. Would that be of significance to you  
 19 in your opinions?  
 20 A. What?  
 21 Q. Whether Mr. Friedman was fully aware  
 22 of the decision to make the payments that  
 23 you're now criticizing and never advised  
 24 against it?  
 25 A. It wouldn't make a difference in my

Page 162

1 J. SCOTT VICTOR, ESQUIRE  
 2 judgment, in my opinion, no.  
 3 Q. So is it your opinion that Dan  
 4 Crowley should have known how things are  
 5 normally handled in a bankruptcy even if his  
 6 bankruptcy lawyer didn't tell him?  
 7 MR. BRESSLER: Object to the  
 8 form.  
 9 THE WITNESS: Well, I think  
 10 anybody should know that you need to  
 11 preserve cash before a bankruptcy.  
 12 BY MR. PETERS:  
 13 Q. Anybody should know that?  
 14 A. Anybody should know that.  
 15 Q. Six members of a Delaware jury from  
 16 all walks of life should know that?  
 17 MR. BRESSLER: Object to the  
 18 form.  
 19 THE WITNESS: Everyone should  
 20 know that if a company files a  
 21 bankruptcy, you need to preserve cash.  
 22 MR. PETERS: Let's mark that  
 23 next.  
 24 (Document marked for  
 25 identification as Exhibit Victor-7.)

Page 163

1 J. SCOTT VICTOR, ESQUIRE  
 2 MR. PETERS: Victor-7.  
 3 THE WITNESS: Thank you. Okay.  
 4 I have it.  
 5 BY MR. PETERS:  
 6 Q. You have Victor-7 in front of you.  
 7 Do you recognize it?  
 8 A. I recognize it to be the minutes of  
 9 a meeting of the board of directors of Coram,  
 10 July 30th, 2000 -- July 31st, 2000.  
 11 Q. In looking in the first paragraph  
 12 there, can you see whether David Friedman was  
 13 present?  
 14 A. He was, according to this.  
 15 Q. Do you see where the meeting took  
 16 place?  
 17 A. Where did the meeting take place?  
 18 At his office.  
 19 Q. Okay. And how much before the  
 20 bankruptcy was this?  
 21 A. One week.  
 22 Q. Okay. Have a look at the CPS sale  
 23 section on Page 2.  
 24 A. Okay.  
 25 Q. It says: "The company represented

Page 164

1 J. SCOTT VICTOR, ESQUIRE  
 2 by Deutsche Banc Alex. Brown sold CPS for 41.3  
 3 million with a gain to the company of \$18.5  
 4 million dollars. Net proceeds are intended to  
 5 pay down the company's revolving senior credit  
 6 facility and a portion of the Series A notes  
 7 in the amount of approximately \$38 million  
 8 dollars combined."  
 9 A. Mm-hmm.  
 10 Q. Do you see that?  
 11 A. I do.  
 12 Q. Now, as I understand your testimony,  
 13 you were not critical of the company using  
 14 proceeds to pay down the revolver, but you are  
 15 critical of the company's decision to pay down  
 16 the principal on the Series A notes?  
 17 A. Series B notes, I think, was  
 18 actually paid down. Yeah, I am.  
 19 Q. Okay. Is it clear to you from  
 20 looking at this exhibit that Mr. Friedman,  
 21 himself, was perfectly well aware that the  
 22 company was making that decision a week before  
 23 bankruptcy?  
 24 A. Yes.  
 25 Q. Does it say anywhere in these board

Pages 161 to 164



Page 173

1 J. SCOTT VICTOR, ESQUIRE  
 2 A. I have no idea. At some point  
 3 between the fall of 2002 and 2004.  
 4 Q. Between the fall of 2002 and the end  
 5 of March of 2003, did you have any discussions  
 6 with the Trustee or his lawyers about bringing  
 7 preference actions relating to these payments?  
 8 A. I may have. I just don't remember.  
 9 Q. "May have" actually doesn't help us.  
 10 If you remember, tell us.  
 11 A. I don't remember.  
 12 Q. Is your second opinion that but the  
 13 for the relationship between Mr. Crowley and  
 14 Cerberus, the first plan would have been  
 15 confirmed?  
 16 A. Yes.  
 17 Q. So there you're predicting what the  
 18 bankruptcy judge would have done under certain  
 19 circumstances?  
 20 MR. BRESSLER: Object to the  
 21 form.  
 22 THE WITNESS: Yes. To an  
 23 extent, yes. I think it was a  
 24 confirmable plan but for that conflict.  
 25 BY MR. PETERS:

Page 175

1 J. SCOTT VICTOR, ESQUIRE  
 2 decisions you can predict, or is it also the  
 3 other judges in the Bankruptcy Court in  
 4 Delaware?  
 5 MR. BRESSLER: Object to the  
 6 form of the question.  
 7 THE WITNESS: I can predict  
 8 what -- I think I can predict what many  
 9 bankruptcy judges do that I'm familiar  
 10 with around the country, including  
 11 Delaware. I know Judge Walsh very well.  
 12 I know the other judges very well.  
 13 BY MR. PETERS:  
 14 Q. And you're able to predict the  
 15 outcome of a matter before that court?  
 16 A. Sometimes. If I'm asked to, I could  
 17 predict it. I've never been asked to.  
 18 Q. Have you ever told a client that you  
 19 can predict the outcome of matters in court?  
 20 A. No. Never been asked.  
 21 Q. But in this case, that's what you  
 22 are being asked to do.  
 23 MR. BRESSLER: Object to the  
 24 form.  
 25 THE WITNESS: In this case one

Page 174

1 J. SCOTT VICTOR, ESQUIRE  
 2 Q. But your opinion is more than that  
 3 it was a confirmable plan; you're saying it  
 4 would have been confirmed?  
 5 A. I believe it would have.  
 6 Q. Okay. It -- and what expertise are  
 7 you drawing on in predicting what would have  
 8 happened in Judge Walrath's courtroom?  
 9 A. Well, where do you want me to start.  
 10 I've known Judge Walrath since my very first  
 11 case that I ever did as a young bankruptcy  
 12 lawyer in 1983. It was with Judge Walrath.  
 13 We've practiced together many, many years.  
 14 I've been in front of her now many times as a  
 15 judge. I know her well. I think I can  
 16 predict her well.  
 17 Q. Has Judge Walrath ever ruled against  
 18 you?  
 19 A. No. I don't think she ever has on  
 20 any of my opinions.  
 21 Q. So in every -- in every matter that  
 22 you've appeared on in front of Judge Walrath,  
 23 she's ruled in your favor?  
 24 A. Yes.  
 25 Q. Is it just Judge Walrath whose

Page 176

1 J. SCOTT VICTOR, ESQUIRE  
 2 of my opinions is that but for the actual  
 3 conflict of interest, that first plan  
 4 would have been confirmed, because there  
 5 are only two issues.  
 6 One was the conflict. And one  
 7 was the valuation. And she ultimately  
 8 came down and decided on the valuation,  
 9 along the lines as we provided our  
 10 valuation in the Trustee's plan, but it  
 11 was the same methodology, the same  
 12 general numbers as was being provided by  
 13 the debtor's valuation expert back at the  
 14 end of 2000.  
 15 BY MR. PETERS:  
 16 Q. Do you know whether David Friedman  
 17 predicted to Coram that the plan would be  
 18 confirmed?  
 19 A. Don't know what David did.  
 20 Q. Do you think your ability to predict  
 21 what a bankruptcy judge will -- would do is  
 22 better than David Friedman's?  
 23 MR. BRESSLER: Object to the  
 24 form.  
 25 THE WITNESS: That's a nebulous

Victor, Esq., J. Scott

8/7/2007

Page 177

1 J. SCOTT VICTOR, ESQUIRE  
 2 and vacuumes question.  
 3 BY MR. PETERS:  
 4 Q. It's a vacuumes question?  
 5 A. It's a question that's done in a  
 6 vacuum. You can't say that. In this  
 7 particular case, I believe Judge Walrath would  
 8 have approved the first plan but for that  
 9 conflict.  
 10 This -- this case, really, but for  
 11 the conflict, is no different than hundreds of  
 12 other cases where you have a valuation  
 13 disputed. It was a run of the mill. When it  
 14 was started, it was a run of the mill  
 15 valuation dispute between the debtor and the  
 16 Equity Committee.  
 17 Q. Would Judge Walrath have been within  
 18 her rights confirming the first plan?  
 19 A. No, not when she found out about the  
 20 conflicts.  
 21 Q. So once she found out about the  
 22 relationship between Crowley and Cerberus, she  
 23 had to deny the plan?  
 24 A. I believe so. She found that it was  
 25 not proposed good faith.

Page 179

1 J. SCOTT VICTOR, ESQUIRE  
 2 the actual conflict of interest.  
 3 Q. And if Coram had fired Crowley,  
 4 would the second plan have been confirmed?  
 5 A. If Coram had fired Crowley before  
 6 the confirmation hearings, I believe the  
 7 second plan would have been confirmed.  
 8 Q. And, in your opinion, would Coram  
 9 have been worse off with Crowley gone but the  
 10 second plan confirmed?  
 11 A. They would have been better off  
 12 coming out of bankruptcy.  
 13 Q. Why?  
 14 A. They'd be out of bankruptcy.  
 15 Q. And they would have lost their CEO,  
 16 who you testified was doing a good job?  
 17 A. He was doing a good job. The  
 18 company lost the CEO, anyway, when the Trustee  
 19 lost the motion to continue his employment for  
 20 six months.  
 21 Q. How long was that after the  
 22 confirmation decision on the second plan?  
 23 A. The confirmation decision on the  
 24 second plan was December of '01, and the  
 25 Trustee lost the employment motion in March of

Page 178

1 J. SCOTT VICTOR, ESQUIRE  
 2 Q. If she had confirmed that first  
 3 plan, would she have been committing  
 4 reversible error?  
 5 MR. BRESSLER: Object to the  
 6 form.  
 7 THE WITNESS: I don't know.  
 8 BY MR. PETERS:  
 9 Q. Did she have the discretion to  
 10 confirm the first plan?  
 11 A. Bankruptcy courts have wide  
 12 discretion under 1129 in proposing plans. You  
 13 go through all the various criteria that's  
 14 required in 1129 of the Bankruptcy Code to  
 15 determine whether a plan is feasible. One of  
 16 those -- one of those requirements is good  
 17 faith. And that's discretionary with the  
 18 court. The court has to find that as a matter  
 19 of fact.  
 20 Q. You say here but for the  
 21 relationship between Mr. Crowley and Cerberus;  
 22 the first plan would have been confirmed. How  
 23 about the second plan?  
 24 A. I believe it was the same thing.  
 25 The second plan wasn't confirmed because of

Page 180

1 J. SCOTT VICTOR, ESQUIRE  
 2 '03.  
 3 Q. Would you agree with the following  
 4 statement: But for the decision of Coram not  
 5 to fire Crowley in December of 2000, the  
 6 second plan would have been confirmed?  
 7 MR. BRESSLER: Object to the  
 8 form.  
 9 THE WITNESS: I don't think  
 10 that Coram had to fire him. I think all  
 11 Dan had to do was to sever his  
 12 relationship with Cerberus.  
 13 BY MR. PETERS:  
 14 Q. How about answering my question,  
 15 Mr. Victor?  
 16 A. Please restate the question.  
 17 Q. Do you agree or disagree with the  
 18 following statement: But for the decision not  
 19 to fire Crowley at the end of 2000, the second  
 20 plan would have been confirmed?  
 21 MR. BRESSLER: Object to the  
 22 form.  
 23 THE WITNESS: Is that a  
 24 hypothetical?  
 25 BY MR. PETERS:

Pages 177 to 180



Victor, Esq., J. Scott

8/7/2007

Page 193

1 J. SCOTT VICTOR, ESQUIRE

2 BY MR. PETERS:

3 Q. Right.

4 A. I don't recall that. I know there

5 was with respect to the second plan.

6 Q. Should there have been one prior to

7 the submission of the first plan?

8 A. It wouldn't have mattered.

9 Q. Have you ever done any investigation

10 to determine whether there was one in

11 connection with the first plan?

12 A. No.

13 Q. Have a look at Victor-7. It's in

14 front of you. It's board minutes of July 31,

15 2000.

16 A. Okay.

17 Q. Have a look at Page 7.

18 A. Okay. Okay. I see. Special

19 committee.

20 Q. So was there a special committee of

21 Coram's board created on or about July 31,

22 2000 to negotiate with the noteholders?

23 A. Looks that way, yes.

24 Q. Crowley wasn't a member of it?

25 A. It doesn't say.

Page 195

1 J. SCOTT VICTOR, ESQUIRE

2 suppliers have a great deal of consternation

3 about what the future of the company is going

4 to be; and just about every company that I've

5 ever been involved in in 25 years in a

6 bankruptcy usually shows a drop in revenue in

7 the bankruptcy.

8 Q. Typically, companies that wind up in

9 bankruptcy do so because they are having some

10 problems, right?

11 A. Yes.

12 Q. So the group of companies that are

13 in bankruptcy, you start off with a selected

14 group of companies that are dealing with some

15 business problems, right?

16 A. Yeah. They are companies in Chapter

17 11. By definition, they have a problem, some

18 sort of problem.

19 Q. And by definition, the population of

20 companies that file for bankruptcy are doing

21 worse off than the companies that don't file

22 for bankruptcy, right?

23 MR. BRESSLER: Object to the

24 form.

25 THE WITNESS: No, that's not

Page 194

1 J. SCOTT VICTOR, ESQUIRE

2 Q. Well, see who the members of it are.

3 Third paragraph up from the bottom: Amaral,

4 Smith, Casey, and Smoley?

5 A. No. Crowley.

6 Q. Turning to Page 3 of your report,

7 you say: "Companies that are in Chapter 11

8 typically do not perform as well as those not

9 in Chapter 11"?

10 A. Generally.

11 Q. Does it take an expert to figure

12 that one out?

13 A. No. It's pretty common knowledge.

14 Q. You're saying companies in

15 bankruptcy do better -- withdrawn.

16 You're saying companies in

17 bankruptcy don't -- aren't doing as well as

18 companies that are not in bankruptcy?

19 A. No, there's a little more to it than

20 that.

21 Q. But is that part of what you're

22 saying?

23 A. That's part of what I'm saying.

24 Generally. Generally, companies that are in

25 Chapter 11, their customers and their

Page 196

1 J. SCOTT VICTOR, ESQUIRE

2 what it's meant to say. It's meant to

3 say that companies in chapter don't

4 perform as well as the same company does

5 out of bankruptcy because of those very

6 concerns.

7 It's obviously very -- it's

8 easy to say companies in bankruptcy

9 aren't as good as companies out of

10 bankruptcy, as a general rule. But this

11 is companies in bankruptcy generally

12 don't perform as well as they would, the

13 same company, out of a bankruptcy.

14 BY MR. PETERS:

15 Q. So you mean when a company is in

16 bankruptcy, typically its revenues decrease?

17 A. Often. Often.

18 Q. Typically when a company is in

19 bankruptcy, its EBITDA decreases?

20 MR. BRESSLER: Object to form.

21 THE WITNESS: Not necessarily.

22 BY MR. PETERS:

23 Q. Typically when a company is in

24 bankruptcy, does its value decrease while it's

25 in bankruptcy?

Pages 193 to 196

Victor, Esq., J. Scott

8/7/2007

Page 201

1 J. SCOTT VICTOR, ESQUIRE

2 Q. So for the first couple of months it

3 was in bankruptcy, it had a problem --

4 A. No, no.

5 Q. -- and then it turned the corner?

6 A. No. Its --

7 MR. BRESSLER: Object to the

8 form.

9 THE WITNESS: Its revenues

10 dropped about 7 or 8 percent for the

11 second half of 2000 after it filed. It

12 continued to have trouble in 2001.

13 Continued to have -- people were worried.

14 The physicians that refer patients for

15 infusion services to Coram were worried

16 that Coram was going to be there or not.

17 They might as well go to a competitor.

18 BY MR. PETERS:

19 Q. Did you speak to any physicians?

20 A. No. I spoke to the people in the

21 satellite offices who do speak with the

22 physicians, and that's exactly what they said.

23 Q. So you learned that physicians were

24 worried?

25 A. Yes.

Page 203

1 J. SCOTT VICTOR, ESQUIRE

2 contemporaneous worries that physicians had at

3 that time?

4 MR. BRESSLER: Object to the

5 form.

6 THE WITNESS: Yes, and also

7 what their concerns were since Coram has

8 been in bankruptcy.

9 BY MR. BARRY:

10 Q. So -- so at least some of the

11 physicians' concerns that you learned about in

12 late 2002 and early 2003 were concerns that

13 those physicians had at that time, right?

14 A. And previously.

15 Q. And during that time, between 2002

16 and June of 2003, Coram's value was

17 increasing?

18 A. Yes.

19 Q. In connection with the preparation

20 of your report, did you prepare any type of

21 empirical study, empirical analysis? Did you

22 do any work like that?

23 A. When you mean "empirical analysis,"

24 a review of other cases and values in and out

25 of bankruptcy, no.

Page 202

1 J. SCOTT VICTOR, ESQUIRE

2 Q. And you conducted those discussions

3 in the satellite offices when?

4 A. Late 2002, early 2003.

5 Q. So in late '02, early '03, the

6 physicians were worried?

7 A. I think throughout the bankruptcy

8 physician referrals were worried that Coram is

9 still going to be a company and be around and

10 not be sold or not be chopped up and

11 liquidated.

12 Q. The -- the worry of the physicians

13 that you just testified about learning about

14 --

15 A. Mm-hmm.

16 Q. -- from interviews --

17 A. Hmm-hmm.

18 Q. -- you conducted those interviews in

19 late 2002 and early 2003?

20 A. Mm-hmm.

21 THE COURT REPORTER: Yes?

22 THE WITNESS: Yes.

23 BY MR. PETERS:

24 Q. So was it your understanding that

25 the worries that you were learning about were

Page 204

1 J. SCOTT VICTOR, ESQUIRE

2 Q. Okay. Is this a fair statement:

3 That the sum total of your work as an expert

4 in this case involved getting a phone call

5 from Mr. Bressler, meeting with him and your

6 colleague, Mr. Goodman?

7 A. Mm-hmm.

8 Q. Leaving the meeting earlier

9 yourself?

10 A. Yes.

11 Q. Having Mr. Goodman continue in a

12 meeting with Mr. Bressler and Mr. Barkasy;

13 having

14 Mr. Goodman draft a report; editing a report,

15 and that you did -- that's what you did,

16 right?

17 A. And reviewing all these documents.

18 Reviewing what I had been involved in for two

19 years in the bankruptcy. I'm quite familiar

20 with this case and what happens. I've been in

21 it since 2002.

22 Q. Is there -- other than that, is

23 there anything that you've done -- else that

24 you've done in connection with your assignment

25 in this case?

Pages 201 to 204

Page 205

1 J. SCOTT VICTOR, ESQUIRE  
2 MR. BRESSLER: Object to the  
3 form.  
4 THE WITNESS: I have reviewed  
5 documents. I wrote the report. I  
6 reviewed documents again in preparation  
7 for this examination; spoke with  
8 Mr. Bressler and  
9 Mr. Barkasy; have not done any empirical  
10 analysis other than what's already  
11 included in my expert report.  
12 BY MR. PETERS:  
13 Q. You wrote this report? I thought  
14 Mr. Goodman wrote the report?  
15 A. Mr. Goodman wrote the first draft,  
16 I wrote thereafter.  
17 Q. How did patient and referral  
18 physician concerns negatively impact Coram?  
19 A. Drop in revenue.  
20 Q. And what analysis have you performed  
21 to connect any particular patient or referring  
22 physician concern to a drop in revenue at  
23 Coram?  
24 MR. BRESSLER: Object to the  
25 form.

Page 207

1 J. SCOTT VICTOR, ESQUIRE  
2 that was proposed?  
3 BY MR. PETERS:  
4 Q. Right.  
5 A. Well, the plan -- the first plan as  
6 proposed converted the debt to equity, so they  
7 wouldn't have had interest payments. They  
8 still would have had to deal with Arnet, the  
9 Arnet settlement. They still would have had  
10 to have dealt with the Internal Revenue  
11 Service. All the things that the Trustee had  
12 to settle would have had to have been settled  
13 by the debtor, anyway, if they had -- if that  
14 plan had been confirmed back in December of  
15 2000.  
16 Q. Are you aware of any particular  
17 vendor refusing to do business with Coram  
18 because Coram was in bankruptcy?  
19 A. No.  
20 Q. Are you aware of any particular item  
21 of revenue that Coram lost as a result of  
22 being in bankruptcy?  
23 A. The revenue dropped, as is  
24 extraordinarily common for companies that file  
25 Chapter 11. Revenue drops. People don't want

Page 206

1 J. SCOTT VICTOR, ESQUIRE  
2 THE WITNESS: Coram's revenue  
3 dropped in 2000 after the bankruptcy was  
4 filed; continued to drop in 2001. It  
5 dropped because it didn't have as much  
6 sales. In Coram's particular  
7 circumstance, the sales come from  
8 referring physicians.  
9 BY MR. PETERS:  
10 Q. How long into 2001 did Coram's sales  
11 continue to drop?  
12 A. I don't recall. There was -- I  
13 think in 2000, there was like a 7 or 8 percent  
14 drop in revenue, and for 2001, maybe 2 or 3  
15 percent drop in revenue.  
16 Q. If Coram had emerged from bankruptcy  
17 in December of 2000, would at that point in  
18 time it -- would it have had to continue to --  
19 withdrawn.  
20 If it had emerged from bankruptcy in  
21 2000, would it have had any expenses in early  
22 2001 that it did not have as a result of  
23 continuing to be in bankruptcy?  
24 MR. BRESSLER: Object to form.  
25 THE WITNESS: Under the plan

Page 208

1 J. SCOTT VICTOR, ESQUIRE  
2 to do business with companies in Chapter 11.  
3 Q. Are you able to identify any  
4 customer, referrer --  
5 A. No.  
6 Q. -- who did not refer business to  
7 Coram or come to Coram because Coram was in  
8 bankruptcy?  
9 A. No. I just saw -- I just saw that  
10 there was a drop in revenue in 2000 and 2001,  
11 which is common.  
12 Q. When was the drop of revenue in  
13 2000?  
14 A. Right after the company filed for  
15 their third -- third and fourth quarters, they  
16 had a drop in revenue.  
17 Q. August, September, October,  
18 November --  
19 A. -- November, December --  
20 Q. December?  
21 A. And into 2001.  
22 Q. And even if the plan had been  
23 confirmed on December 21st of 2000, Coram  
24 would have already suffered that drop of  
25 revenue --

Victor, Esq., J. Scott

8/7/2007

Page 209	Page 210
<p>1 J. SCOTT VICTOR, ESQUIRE</p> <p>2 A. Sure.</p> <p>3 Q. -- in 2000?</p> <p>4 A. Absolutely.</p> <p>5 Q. Let's turn to Page 4 of your report.</p> <p>6 A. Okay.</p> <p>7 Q. You refer in this section of your</p> <p>8 report to a claim that Mr. Crowley had.</p> <p>9 A. A proof of claim file, yes.</p> <p>10 Q. What was Mr. Crowley's claim?</p> <p>11 A. Mr. Crowley's claim was 17 million,</p> <p>12 approximately.</p> <p>13 Q. And what was it based upon?</p> <p>14 A. It was based upon his claim that he</p> <p>15 was entitled to a bonus for increasing Coram's</p> <p>16 EBITDA.</p> <p>17 Q. And did Mr. Crowley's employment</p> <p>18 contract with Coram contain a provision that</p> <p>19 he was entitled to a bonus based upon certain</p> <p>20 EBITDA targets?</p> <p>21 A. Yes.</p> <p>22 Q. And had Coram achieved those EBITDA</p> <p>23 targets?</p> <p>24 A. Yeah. They did.</p> <p>25 Q. So based on the language of</p>	<p>1 J. SCOTT VICTOR, ESQUIRE</p> <p>2 Mr. Crowley's employment agreement with Coram</p> <p>3 and Coram's financial performance, was Mr.</p> <p>4 Crowley entitled to those bonuses?</p> <p>5 A. He was entitled to it as a matter of</p> <p>6 contract. Whether he was entitled to it as a</p> <p>7 matter of the pre-petition employment</p> <p>8 agreement and everything that went on in the</p> <p>9 case with the conflict of interest, very</p> <p>10 doubtful.</p> <p>11 But by the book, his contract</p> <p>12 provided for a bonus for EBITDA improvement.</p> <p>13 There was EBITDA improvement. And that's why</p> <p>14 he filed a very large claim.</p> <p>15 Q. And how much was he entitled to</p> <p>16 based upon his contract and based upon the</p> <p>17 performance of Coram?</p> <p>18 MR. BRESSLER: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: I don't know how</p> <p>21 much he was entitled to. I know that his</p> <p>22 claim as filed was about 17 million.</p> <p>23 BY MR. PETERS:</p> <p>24 Q. And did you ever look at that claim</p> <p>25 to determine whether or not, based upon the</p>
Page 211	Page 212
<p>1 J. SCOTT VICTOR, ESQUIRE</p> <p>2 contract and based upon Coram's economic</p> <p>3 performance, he was really entitled to 17</p> <p>4 million under that agreement, putting aside</p> <p>5 whatever defenses somebody might have had?</p> <p>6 A. I did not. Never did that. Never</p> <p>7 looked and never had -- did that analysis --</p> <p>8 Q. Did anybody ever suggest to you that</p> <p>9 Crowley was entitled to some bonus number less</p> <p>10 or other than \$17 million?</p> <p>11 A. Well, I know the Trustee had reached</p> <p>12 a letter of intent settlement with Mr. Crowley</p> <p>13 simultaneously with seeking to extend his</p> <p>14 employment for six months. And I think under</p> <p>15 the settlement agreement, Mr. Crowley was</p> <p>16 getting a few million dollars.</p> <p>17 Q. But I'm asking you whether you have</p> <p>18 any reason to believe that the amount that</p> <p>19 Crowley was entitled to based upon his</p> <p>20 contract was other than 17 million?</p> <p>21 A. No.</p> <p>22 MR. BRESSLER: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I have no opinion</p> <p>25 one way or the other.</p>	<p>1 J. SCOTT VICTOR, ESQUIRE</p> <p>2 BY MR. PETERS:</p> <p>3 Q. But you're aware that Crowley was,</p> <p>4 in fact, entitled to some type of performance</p> <p>5 bonus based on his contract with Coram?</p> <p>6 A. I believe so, yes.</p> <p>7 MR. PETERS: Mark this one. So</p> <p>8 we have 7 and 8.</p> <p>9 THE COURT REPORTER: 8 and 9.</p> <p>10 (Documents marked for</p> <p>11 identification as Exhibits Victor-8 and</p> <p>12 Victor-9.)</p> <p>13 MR. BRESSLER: Which one is 8</p> <p>14 and which one's 9?</p> <p>15 THE COURT REPORTER: This one's</p> <p>16 9.</p> <p>17 BY MR. PETERS:</p> <p>18 Q. Do you recognize Victor-8? It's a</p> <p>19 letter from Barry Bressler to Scott Schreiber</p> <p>20 dated December 24, 2002.</p> <p>21 A. I have seen this at some point in my</p> <p>22 involvement in this case, yes.</p> <p>23 Q. What is it?</p> <p>24 A. This is a letter of intent between</p> <p>25 the Trustee and Mr. Crowley for a transition</p>

Pages 209 to 212

Page 233

1  
2 CERTIFICATE  
3

4 I HEREBY CERTIFY that the  
5 proceedings, evidence and objections are  
6 contained fully and accurately in the  
7 stenographic notes taken by me upon the video  
8 deposition of J. SCOTT VICTOR, ESQUIRE, taken  
9 on AUGUST 7, 2007, and that this is a true and  
10 correct transcript of same.  
11

12  
13  
14  
15  
16 MICHELLE L. GRAY, CSR  
and Notary Public

17  
18 (The foregoing certification of this  
19 transcript does not apply to any reproduction  
20 of same by any means, unless under the direct  
21 control and/or supervision of the certifying  
22 reporter.)  
23  
24  
25

Page 233

# **Exhibit E**



Coram - 5/17

Conversation w/ Rich Barkasy

Testify about 5-6 issues

① July 2000 (Coram filed Aug 8, 2000, Crowley CEO in Nov '99)

- Crowley made \$6.3 mil cash int payment

- Loan docs allowed for PIK

- Summer 2000 - sold CPS (closed 7/31)

- Aug 1, 2000 - net proceeds (\$38 mil) wired to N/H

• \$28.5 mil to pay off secured revolver

• Balance to pay down principal of unsecured notes - <sup>Discretion</sup> except N/H

- JSV: unusual for company to make these payments before Ch. 11 <sup>had</sup>

• Particularly if POR is to give N/H the Company <sup>to consent to sale</sup>

• Court found \$6.3 mil unusual

• If waited on unsecured note payment

- JSV: Companies usually conserve cash

going into Ch. 11

↓  
Wouldn't have been effective if they filed

\$9.5 would have to be shared if part of POR

Payments discretionary + ~~improvement~~ imprudent

② Support damages claim

- POR 1+2 not confirmed b/c of Crowley conflict

• Dec 2000 + Dec 2001

- Trustees plan effective 12/1/04

- Claim - stayed in bankruptcy for longer than it should have

### - Claims

- Professional claims incurred
- Business losses due to bankruptcy
- JSV: likely that absent Crowley conflict, POR 1 confirmable
  - Only other main objection by E.C. was valuation
  - Ultimate valuation that was accepted by Court (EB/SSG) was consistent w/ Debtor's original valuation (Goldin) rather than E.C. (Deloitte)
  - Can summarize (Metac/Temin report)
    - ① mkt concerns <sup>exacerbated</sup> b/c Rilet was a liquidation in which physicians lost \$

### ③ Companies in bankruptcy do not perform as well as those outside Ch. 11

- Employee uncertainty
- Loss of value of stock comp
- Customer concerns about going concern
- Supply disruption from trade
- Mgmt distractions
- Court monitored use of cash
- Less agility to explore opportunities b/c of required court approval
- Competitors flame concerns (specific references)
- Liquidity used for professional fees
- Potential for employee Exodus
- Had to institute costly KERP
- Danitz sent out letter to customers
- JSV: Particularly bad for Coram b/c of nature of reasons for rejection of plan
  - Public through filings: CEO in "bad faith" and "conflict of interest"

- 
- JSV: If plan was confirmed, no need for KERPs
  - Ultimately did KERP b/c of uncertainty stemming from prolonged nature of case

④ Description of why Trustee tried to employ Crowley for 6 months

- Trustee appointed March 2002
- Trustee said Crowley couldn't get paid by Cerberus
- Crowley still was trying to get paid by agree
- Judge did not approve Employment Agreement or proposed settlement claim of \$2 mil for \$16 mil claim.
- Defense: <sup>Assertion:</sup> Why would Trustee seek to settle if Estate ultimately had bigger claim against him?
- JSV: Why did Trustee seek to enter into agreement?

- Trustee viewed his task as quick emergence
- Had discussions w/ E.C. + N/H
- Tried to mediate + reached agreement w/ N/H only
- Noteholders contribute notes + \$56 mil in cash for Company + release
- Trustee settled w/ Crowley

- ① keep Crowley so as not to destabilize Company
- ② Trustee was trying to settle w/ as many parties as possible to facilitate consensual plan

- Saves \$ through expedited emergence
- Certainty
- Evidenced by mediation/settlement w/ N/H, settlement w/ R-Net, settlement w/ IRS
- Only variable not settled was w/ E.C.
- Settlement w/ Crowley would have freed \$ for SH + establish certainty of payout

Reasonable  
exercise of  
business  
judgement  
① Fix/reduce  
claim to  
create clarity  
for Company +  
create certainty

5  
Cover Page:

Expert Report of JSV in the case of ...

Hours

5/17	Call w/ Barkasy	1 hour
5/23	Review material	30 min
5/29	Review material	60 min
5/30	Meeting w/ Barkasy/Barrie	120 min
5/30	Draft report	120 min
5/31	" "	90 min
<u>6/1</u>		
6/1	Draft Report	90 min
6/4	" "	60 min
6/4	Call w/ JSV	10 min
6/5	Colls w/ Barrie	10 min
6/6	Cont call	10 min
6/8	Review report	30 min

Coram - 5/30

Letter to Rich Barkasy

- "Asked to consider..."
- List of materials that were considered
- Resume for JSV

① Debt repayments while Coram was considering  
bankruptcy - unusual

- 7/31 letter from Crowley to N/H <sup>LL to NH</sup> ~~(will be sent)~~ <sup>has summary</sup> of payments
  - \* Says he is sending \$60 mil of CPS proceeds <sup>(FCL)</sup>
- 2/28/00: Friedman to Crowley letter <sup>(FCL)</sup> → says bankruptcy is an option (Friedman is bankruptcy counsel)
- Payments totalled \$60 mil
  - \$6.3 int <sup>payment - July 2000</sup> ~~reasonable~~
  - \$38 mil from CPS
  - "Voluntarily" balance paid to reduce revolver
- In most instances file Ch. 11 - conserve cash
  - Especially when debt converted to equity
  - Cash needed to fund bankruptcy expenses
- \$6.3 mil made in cash but could have been made in kind 3 weeks before bankruptcy
  - Read Walrath's second decision <sup>(WAD)</sup> - reference argument but not Walrath
- \$38 mil CPS payment
  - \* If completed in Ch. 11 would not have had to use proceeds to pay down debt (N/H consent not enforceable in Ch. 11)

Good background on  
- SEC Filings  
- Disclosure statement

② Plan confirmed absent conflict  
- Summarize Termin report <sup>(15)</sup> in 1 PP

\$30 mil in admin from rejection of plan 1

+ effective date of Trustee's plan  
- Source doc: Danitz spreadsheet (15)  
- Danitz deposition - pg. 162-164

• With exception of winddown costs, all would not have been incurred

Professional fees paid were approved by Court

- Approval of final fee apps subject to any Party of Interest

- Approval of final fee apps is a conclusive determination that the fees + expenses allowed by Court were reasonable + necessary

- Trustee objected to E.C. counsel's final fee app + that Court reduced fee



③ Companies in Ct. II don't perform as well

- JSV's experience

- Coram specifically hindered <sup>harm</sup> b/c of prolonged nature of proceeding

- Harm exacerbated b/c of nature of rejection

- Recite/reference Walrath opinions 1 + 2

- Bias, conflict, bad faith

- Evidence that Coram didn't do as well

specifically mention → Crowley letters <sup>(4)</sup> to B or D

- Softness of revenue

- Calm constituents

- Apria, Gentiva, etc., "tamping down of sales"

Members of mgmt team through testimony and EMs expressed concerns

No need to be too specific

- Memo from Sarocco to Crowley re NutraShare taking press release to referral source (SL)

- EM from Kurt Davis

- Danitz depo - Pg. 164

- Danitz Pg. 165-166 re letter to vendors + customers to calm them

- Danitz 168-169 - Oley Foundation expressed concerns <sup>interest group for TPN patients</sup>

- Danitz 170-171 - contract w/ HealthNet mandated emergence by a certain time

- Sarocco deposition 146-171

- Marabito testimony - HealthNet, no flexibility - Pg. 164

- Davis depo 88-95 - concerns about vendors looking unfavorable upon rejection of plans b/c Coram said they would emerge quickly

- ④ Transition agreement w/ Crowley + fixing claim (FC-C) (TRA)
- Reasonable exercise of business judgement
  - Tried to facilitate quick emergence through POR consensual w/ all constituents
  - Conducted mediation w/ N/H + EC in 9/02
  - Entered into settlement w/ N/H - agreed to contribute \$56 mil + preferred stock int + Notes in exchange for release + ownership of reorg Colam
  - Trustee entered into settlements w/ other large creditors - IRS, R-Net, TBOB, AT+T
  - Crowley's emp contract expired 11/30/02
    - Trustee wanted to maintain stability while negotiating <sup>consensual</sup> plan → transitional agreement
    - Potential disruption in operations from departure made Trustee's decision reasonable exercise of bus judgement
    - Trustee reduced Crowley claim from \$16 mil to \$2 mil plus release, subject to execution of formal settlement agreement + court approval
  - Agreement consistent w/ Trustee's goal of proposing POR that resolved as many disputes as possible + provided as much certainty as possible as to amount of cash distribution that would be received by shareholders
  - Consequently, letter agreement represented reasonable exercise of business judgement

Shortly before hearing on <sup>Trustee's</sup> motion to approve transition agreement (confirm exact name), Crowley produced documents which included draft letters that reflected conversations b/w Crowley + Corberus + Crowley's thoughts re possible settlement w/ Corberus.

Equity committee argued that draft letters showed that Crowley was continuing to attempt to get paid by Corberus for his work at Colam. It was reasonable for Trustee to proceed w/ his motion to allow the court to determine whether that was so or whether, as Crowley argued, the draft letters had nothing to do w/ Colam.

See transcript  
of Crowley  
agreement  
hearing  
(CAH)

After court denied motion, Trustee properly included prosecution of claim against Crowley as part of POR

- Under code, Trustee has responsibility to maximize value of estate for benefit of stakeholders
- Under confirmed plan, net proceeds <sup>of case</sup> are first payable to unsecured creditors for post-petition interest + remaining goes to stakeholders
- Reference provision in POR / confirmation order (to come)